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ONE HUNDRED AND THIRTY-SIXTH SESSION

1913

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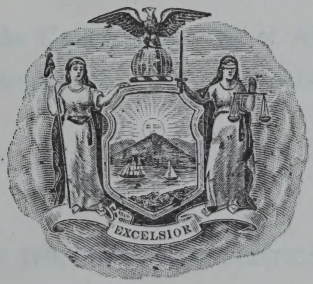

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STATE OF NEW YORK

PROCEEDINGS

OF THE

COURT FOR THE TRIAL OF IMPEACHMENTS

THE PEOPLE OF THE STATE OF NEW YORK
BY THE ASSEMBLY THEREOF
AGAINST
WILLIAM SULZER, AS GOVERNOR

Held at the Capitol in the City of Albany, New York
September 18, 1913, to October 17, 1913

(A COPY OF THE DAILY PROCEEDINGS FOR FILING ONLY)

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STATE OF NEW YORK

COURT FOR THE TRIAL OF IMPEACHMENTS

IN THE MATTER

of the Trial of the

ARTICLES EXHIBITED BY THE ASSEMBLY OF THE STATE OF NEW YORK,

In the name of themselves and of all the People of the State of New York, against WILLIAM SULZER, Governor of said State, in maintenance of their impeachment against him for wilful and corrupt misconduct in his said office, and for high crimes and misdemeanors.

SENATE CHAMBER,

ALBANY, N. Y., *September* 18, 1913.

PRESENT:

Hon. EDGAR M. CULLEN, Presiding Judge,
and
THE JUDGES OF THE COURT OF APPEALS,
and
THE SENATORS OF THE STATE OF NEW YORK.

APPEARANCES:

THE MANAGERS:

Aaron J. Levy, Chairman,
Patrick J. McMahon,
Abraham Greenberg,
William J. Cullen,
Theodore Hackett Ward,

Joseph B. Fitzgerald,
Tracy P. Madden,
Thomas K. Smith,
Herman F. Schnirel.

Counsel for the Managers:

Hon. Alton B. Parker,
Hon. John B. Stanchfield,
Hon. Edgar Truman Brackett,
Eugene Lamb Richards, Esq.,
Isidor J. Kresel, Esq.,
Hiram C. Todd, Esq.,
Henderson Peck, Esq.

William Sulzer, Respondent.

Counsel for the Respondent:

Hon. D-Cady Herrick,
Hon. Irving G. Vann,
Hon. Harvey D. Hinman,
Louis Marshall, Esq.,
Austen G. Fox, Esq.

Mr. Justice Cullen, President.— The Assembly of the State having presented to the Senate Articles of Impeachment against William Sulzer, Governor of the State, the President pro tempore of the Senate, in accordance with law, has summoned the Senators of the State and the Judges of the Court of Appeals to convene at this time and place as a Court of Impeachment.

The first proceeding in order will be to call the roll, to see that a majority of the Senators and a majority of the Judges of the Court of Appeals are in attendance as required by the Constitution, to constitute a valid court. The Clerk will now proceed to call the roll.

The Clerk.— Senator Argetsinger.
Senator Argetsinger.— Here.

The Clerk.— Judge Bartlett.
Judge Bartlett.— Here.

The Clerk.— Senator Blauvelt.
Senator Blauvelt.— Here.

The Clerk.— Senator Boylan.
Senator Boylan.— Here.

The Clerk.— Senator Brown.
Senator Brown.— Here.

The Clerk.— Senator Bussey.
Senator Bussey.— Here.

The Clerk.— Senator Carroll.
Senator Carroll.— Here.

The Clerk.— Senator Carswell.
Senator Carswell.— Here.

The Clerk.— Judge Chase.
Judge Chase.— Here.

The Clerk.— Senator Coats.
Senator Coats.— Here.

The Clerk.— Judge Collin.
Judge Collin.— Here.

The Clerk.— Judge Cuddeback.
Judge Cuddeback.— Here.

The Clerk.— Judge Cullen, President.
The President.— Here.

The Clerk.— Senator Cullen.
Senator Cullen.— Here.

The Clerk.— Senator Duhamel.
Senator Duhamel.— Here.

The Clerk.— Senator Emerson.
Senator Emerson.— Here.

The Clerk.— Senator Fitzgerald.
(No response.)

The Clerk.— Excused. Senator Foley.
Senator Foley.— Here.

The Clerk.— Senator Frawley.
Senator Frawley.— Here.

The Clerk.— Senator Godfrey.
Senator Godfrey.— Here.

The Clerk.— Judge Gray.
(No response.)

The Clerk.— Senator Griffin.
Senator Griffin.— Here.

The Clerk.— Senator Heacock.
Senator Heacock.— Here.

The Clerk.— Senator Healy.
Senator Healy.— Here.

The Clerk.— Senator Heffernan.
Senator Heffernan.— Here.

The Clerk.— Senator Herrick.
Senator Herrick.— Here.

The Clerk.— Senator Hewitt.
Senator Hewitt.— Here.

The Clerk.— Judge Hiscock.
Judge Hiscock.— Here.

The Clerk.— Judge Hogan.
Judge Hogan.— Here.

The Clerk.— Senator McClelland.
Senator McClelland.— Here.

The Clerk.— Senator McKnight.
Senator McKnight.— Here.

The Clerk.— Senator Malone.
Senator Malone.— Here.

The Clerk.— Judge Miller.
Judge Miller.— Here.

The Clerk.— Senator Murtaugh.
Senator Murtaugh.— Here.

The Clerk.— Senator O'Keefe.
Senator O'Keefe.— Here.

The Clerk.— Senator Ormrod.
Senator Ormrod.— Here.

The Clerk.— Senator Palmer.
Senator Palmer.— Here.

The Clerk.— Senator Patten.
Senator Patten.— Here.

The Clerk.— Senator Peckham.
Senator Peckham.— Here.

The Clerk.— Senator Pollock.
Senator Pollock.— Here.

The Clerk.— Senator Ramsperger.
Senator Ramsperger.— Here.

The Clerk.— Senator Sage.
Senator Sage.— Here.

The Clerk.— Senator Sanner.
Senator Sanner.— Here.

The Clerk.— Senator Seeley.
Senator Seeley.— Here.

The Clerk.— Senator Simpson.
Senator Simpson.— Here.

The Clerk.— Senator Stivers.
Senator Stivers.— Here.

The Clerk.— Senator Sullivan.
Senator Sullivan.— Here.

The Clerk.— Senator Thomas.
Senator Thomas.— Here.

The Clerk.— Senator Thompson.
Senator Thompson.— Here.

The Clerk.— Senator Torborg.
Senator Torborg.— Here.

The Clerk.— Senator Velte.
Senator Velte.— Here.

The Clerk.—Senator Wagner.
Senator Wagner.— Here.

The Clerk.— Senator Walters.
Senator Walters.— Here.

The Clerk.— Senator Wende.
Senator Wende.— Here.

The Clerk.— Judge Werner.
Judge Werner.— Here.

The Clerk.— Senator Wheeler.
Senator Wheeler.— Here.

The Clerk.— Senator White.
Senator White.— Here.

The Clerk.— Senator Whitney.
Senator Whitney.— Here.

The Clerk.— Senator Wilson.
Senator Wilson.— Here.

The Clerk.— A majority of both branches are present.

The President.— There being a majority of the members of the Senate and also of the Judges of the Court of Appeals in attendance, this Court is duly convened.

Crier, make the Great Proclamation.

The Crier.— Hear ye, hear ye, hear ye, all persons having any business before this High Court of Impeachment held in and for the State of New York, may now draw near and give their attention and they will be heard.

The President.— The next procedure in order is that the Clerk shall administer to the Presiding Officer of the Court the Constitutional oath.

The Clerk.— You, Edgar M. Cullen, Chief Judge of the Court of Appeals, do solemnly swear to truly and impartially hear, try and determine the impeachment of the Assembly of the State of

New York against William Sulzer, Governor of said State, so help you God?

The President.— I do.

The President.— The next duty imposed by law is the administration of the oath to the various members of the Court by the presiding officer.

Suggestion has been made as to the personnel of the Court of Appeals, that three of the Judges who hold their position in that Court by virtue of assignment from the Supreme Court — the question has been raised whether they under the Constitution should become members of this Court of Impeachment. Personally, I have no doubt on the question. Under the terms of the Constitution, when designated by the Governor in obedience to a call from the Court of Appeals, those persons become Judges of the Court of Appeals and the Constitution is explicit that their duties as Judges of the Supreme Court shall cease; but, I find that under the old Constitution of 1846 before the Court of Appeals was constituted as at present provided, when there were four elected judges and four judges of the Supreme Court changing every year sat as members of the Court of Appeals, there was an impeachment of one Mr. Dorn, a Canal Commissioner, and all of the Judges of the Supreme Court who were sitting in the Court of Appeals at that time sat in the Court of Impeachment.

Therefore, as I have said, I am entirely clear that the gentlemen who have been judges of the Supreme Court and are sitting by virtue of the designation of the Court of Appeals, are in every respect as fully judges of the Court of Appeals as those that are elected.

Still, that is my individual opinion only, and of course the judgment of the majority of the Court must control. Therefore, if any member of the Court entertains a contrary opinion he will please rise and object to their being sworn, in which case I will pass their names, and after the other members of the Court are sworn, submit it to the Court to determine whether they are members of the Court or not. If, however, no objection is made, I shall assume that we are all in accord in the view that they are members of the

Court of Impeachment and shall proceed without further allusion to the matter to swear those gentlemen as their names are called.

Mr. Parker.— Presiding Judge, while this is not exactly in line with the direction which you have given, I trust you will permit me to say on behalf of the counsel for the Managers and the Managers themselves, that having taken up the matter for consideration, while there was some doubt in the minds of some, there was no doubt about the desirability to have Justices Hiscock, Chase and Miller sit.

Mr. Herrick.— May it please the Court we had supposed this was a matter in which counsel had no concern, but after what has been said it is due to the Court to say that counsel for the respondent have considered this matter and have no doubt about the legality of the learned gentlemen sitting as members of the Court, nor have they any doubt about the desirability of having them act.

The President.— If there is no objection made then, by any member of the Court, the Judges may be called in their regular order. As the Clerk calls the name, each member of the Court will step forward and be sworn.

The Clerk.— Senator Argetsinger.

The President.— Senator Argetsinger, you do solemnly swear that you will truly and impartially hear, try and determine the impeachment of the Assembly of the State of New York against William Sulzer, Governor of said State, according to the evidence, so help you God.

Senator Argetsinger.— I do.

The Clerk.— Judge Bartlett.

The President.— If any member of the Court wishes to affirm instead of being sworn, if he will make known his desire, of course his desire will be complied with.

Judge Bartlett.— I will affirm, Mr. President.

The President.— Judge Bartlett, you do solemnly, sincerely, and truly declare and affirm that you will truly and impartially hear, try and determine the impeachment of the

Assembly of the State of New York against William Sulzer, Governor of said State, according to the evidence.

Judge Bartlett.— I do.

The Clerk.— Senator Blauvelt.
(Senator Blauvelt duly took the oath.)

The Clerk.— Senator Boylan.
(Senator Boylan duly took the oath.)

The Clerk.— Senator Brown.
(Senator Brown duly took the oath.)

The Clerk.— Senator Bussey.
(Senator Bussey duly took the oath.)

The Clerk.— Senator Carroll.
(Senator Carroll duly took the oath.)

The Clerk.— Senator Carswell.
(Senator Carswell duly took the oath.)

The Clerk.— Judge Chase.
(Judge Chase duly took the oath.)

The Clerk.— Senator Coats.
(Senator Coats duly took the oath.)

The Clerk— Judge Collin.
(Judge Collin duly took the oath.)

The Clerk.— Judge Cuddeback.
(Judge Cuddeback duly took the oath.)

The Clerk.— Senator Cullen.
(Senator Cullen duly took the oath.)

The Clerk.— Senator Duhamel.
(Senator Duhamel duly took the oath.)

The Clerk.— Senator Emerson.
(Senator Emerson duly took the oath.)

The Clerk.— Senator Foley.
(Senator Foley duly took the oath.)

The Clerk.— Senator Frawley.

Mr. Herrick.— May it please the Court, at this time counsel desire to enter a special appearance for the purpose of raising certain objections to the organization of the Court and the jurisdiction of the Court over the respondent. I will file that.

The President.— You may file that.

Mr. Herrick files special appearances with the Court as follows:

STATE OF NEW YORK.

IN THE

COURT FOR THE TRIAL OF IMPEACHMENTS.

THE PEOPLE OF THE STATE OF NEW YORK, BY THE ASSEMBLY THEREOF, *against* WILLIAM SULZER, As Governor.

The undersigned appear specially for the respondent for the purpose of raising certain questions relative to the organization of the Court and as to its jurisdiction over the respondent.

D-CADY HERRICK,
IRVING G. VANN,
AUSTEN G. FOX,
LOUIS MARSHALL,
HARVEY D. HINMAN.

The President.— Under the view the Presiding Officer takes of the statute, the members of the Court must be sworn before any proceedings are taken, and if there is any valid objection and respondent has a right to challenge, as to which the Presiding Officer of the court expresses no opinion, still if there is such a right it will be reserved to a later stage.

Mr. Herrick.— I simply want to call the attention of the Court to the fact that the practice, as I understand, heretofore has been to challenge and then the challenged person stands aside until the remainder of the Court are sworn in, the same as you indicated

was the course to be taken if there were any objections made to any of the judges of the Court of Appeals sitting.

The President.— The Presiding Officer of the Court entertains a different opinion. The precedents are not wholly controlling for the reason that since the last impeachment trial in this State, that of Judge Barnard, the procedure of the Court of Impeachment has been prescribed by the statutes. Statutory provisions will be found in the Code of Criminal Procedure, and it declares that the members of the Court must be sworn before taking any action in the impeachment. It is very evident that if there was to be allowed a challenge at this stage and temporarily set aside the challenged members of the Court, the Court might be without a quorum.

Mr. Herrick.— Of course we yield to the judgment of the Presiding Officer, but we preserve our rights, as I understand it, to challenge at a proper time.

The President.—Yes; without prejudice to any of your rights.

Mr. Herrick.— Permit me to ask if that proper time will arrive after all members of the Court have been sworn in?

Mr. President.— I think it will have to be deferred until after rules have been adopted for the procedure of the Court. Of course the judgment of the Presiding Officer is not controlling if a majority of the Court are adverse.

Mr. Herrick.— It is controlling upon us, sir. We will then renew, or make our challenge after the adoption of rules.

Mr. President.— I think I can state for the Court you will then be allowed the same privilege as if you had made it now.

Mr. Herrick.— We simply want to preserve our rights if we have them.

(Senator Frawley duly took the oath.)

The Clerk.— Senator Godfrey.

(Senator Godfrey duly took the oath.)

The Clerk.— Judge Gray.
(No response.)

The Clerk.— Senator Griffin.
(Senator Griffin duly took the oath.)

The Clerk.— Senator Heacock.
(Senator Heacock duly took the oath.)

The Clerk.— Senator Healy.
(Senator Healy duly took the oath.)

The Clerk.— Senator Heffernan.
(Senator Heffernan duly took the oath.)

The Clerk.— Senator Herrick.
(Senator Herrick duly took the oath.)

The Clerk.— Senator Hewitt.
(Senator Hewitt duly took the oath.)

The Clerk.— Judge Hiscock.
(Judge Hiscock duly took the oath.)

The Clerk.— Judge Hogan.
(Judge Hogan duly took the oath.)

The Clerk.— Senator McClelland.
(Senator McClelland duly affirmed.)

The Clerk.— Senator McKnight.
(Senator McKnight duly took the oath.)

The Clerk.— Senator Malone.
(Senator Malone duly took the oath.)

The Clerk.— Judge Miller.
(Judge Miller duly took the oath.)

The Clerk.— Senator Murtaugh.
(Senator Murtaugh duly took the oath.)

The Clerk.— Senator O'Keefe.
(Senator O'Keefe duly took the oath.)

The Clerk.— Senator Ormrod.
(Senator Ormrod duly took the oath.)

The Clerk.— Senator Palmer.
(Senator Palmer duly took the oath.)

The Clerk.— Senator Patten.
(Senator Patten duly took the oath.)

The Clerk.— Senator Peckham.
(Senator Peckham duly took the oath.)

The Clerk.— Senator Pollock.
(Senator Pollock duly took the oath.)

The Clerk.— Senator Ramsperger.

Mr. Herrick.— May it please the Court, we would like to reserve our right to challenge Senator Ramsperger also, and for the purpose of not annoying the Court further, also reserve the right to challenge Senator Sanner and Senator Wagner at the proper time.

(Senator Ramsperger duly took the oath.)

The Clerk.— Senator Sage.
(Senator Sage duly took the oath.)

The Clerk.— Senator Sanner.
(Senator Sanner duly took the oath.)

The Clerk.— Senator Seeley.
(Senator Seeley duly took the oath.)

The Clerk.— Senator Simpson.
(Senator Simpson duly took the oath.)

The Clerk.— Senator Stivers.
(Senator Stivers duly took the oath.)

The Clerk.— Senator Sullivan.
(Senator Sullivan duly took the oath.)

The Clerk.— Senator Thomas.
(Senator Thomas duly took the oath.)

The Clerk.— Senator Thompson.
(Senator Thompson duly took the oath.)

The Clerk.— Senator Torborg.
(Senator Torborg duly took the oath.)

The Clerk.— Senator Velte.
(Senator Velte duly took the oath.)

The Clerk.— Senator Wagner.
(Senator Wagner duly took the oath.)

The Clerk.— Senator Walters.
(Senator Walters duly took the oath.)

The Clerk.— Senator Wende.
(Senator Wende duly took the oath.)

The Clerk.— Judge Werner.
(Judge Werner duly took the oath.)

The Clerk.— Senator Wheeler.
(Senator Wheeler duly took the oath.)

The Clerk.— Senator White.
(Senator White duly took the oath.)

The Clerk.— Senator Whitney.
(Senator Whitney duly took the oath.)

The Clerk.— Senator Wilson.
(Senator Wilson duly took the oath.)

The President.— The next procedure in order will be to call the parties. Mr. Clerk, call the Managers of the Assembly. You need not call them individually.

The Clerk.— The Managers of the Assembly.

The President.— Do the Managers appear by counsel or in person.

Manager McMahon.— We appear by counsel.

The President.— Give the names of the counsel who appear for the Managers of the Assembly.

Manager McMahon.— Alton B. Parker, Edgar T. Brackett, John B. Stanchfield, Eugene Lamb Richards, Jr., Isidor J. Kresel, Hiram C. Todd, Henderson Peck.

The President.— Mr. Clerk, call the Governor.

Mr. Herrick.— We desire to appear specially for the purpose indicated in our special notice of appearance heretofore filed.

The President.— Gentlemen, it does not appear that any further proceedings can be taken by the Court until rules are adopted for its guidance.

Mr. Parker.— With the permission of the Court, do I understand that the counsel decline to enter any general appearance?

The President.— You will have an opportunity for that to-morrow.

Senator Wagner.— I offer the following resolution: "Resolved, That a committee of three be appointed by the Presiding Judge to prepare and report rules of procedure of this Court."

The President.— Is the motion seconded?

Senator Sullivan.— I second the motion.

The President.—All in favor of the motion please say aye; all opposed, no. The motion is carried. The Presiding Judge will appoint Senator Wagner, Senator Brown and Judge Willard Bartlett.

Senator Wagner.— Mr. President, if I may be permitted to make a suggestion. I suggest that the President direct the Clerk and the Doorkeeper to permit no one upon this floor of the Senate except the members of the Court, the counsel in the case, the respondent, the newspaper representatives, and the officers of the Court.

The President.— If there is no objection to that, it seems to the Presiding Officer that it is a proper regulation to be enforced and it will be so enforced, if there is no objection.

Senator Wagner.— I now move the Court of Impeachment adjourn until to-morrow morning, at ten o'clock, so as to give an opportunity to the Committee of Rules to meet.

The President.—All in favor of the motion please say aye. Opposed, no. Carried. Crier, adjourn court.

The Crier.— Hear ye, hear ye, hear ye, all persons having any further business before this High Court of Impeachment, held in and for the State of New York, may depart hence and appear here to-morrow morning at ten o'clock, to which time this Court now stands adjourned.

The President.— Persons other than members of the Court will wait until the Court has retired from the Court-room. They will keep their seats until the members of the Court have retired from the Court-room.

Thereupon the Impeachment Court adjourned until 10 a. m., Friday, September 19, 1913.

SENATE CHAMBER,

ALBANY, N. Y., *September* 19, 1913.

Pursuant to adjournment the Court convened at 10 o'clock a. m.

PRESENT:

Hon. EDGAR M. CULLEN, Presiding Judge,
and
THE JUDGES OF THE COURT OF APPEALS,
and
THE SENATORS OF THE STATE OF NEW YORK.

APPEARANCES:

THE MANAGERS:

Same as heretofore.

Counsel for the Managers:

Same as heretofore.

Counsel for the Respondent:

Same as heretofore.

The President.— Call the roll.

The Clerk.— Senator Argetsinger.
Senator Argetsinger.— Here.

The Clerk.— Judge Bartlett.
Judge Bartlett.— Here.

The Clerk.— Senator Blauvelt.
Senator Blauvelt.— Here.

The Clerk.— Senator Boylan.
Senator Boylan.— Here.

The Clerk.— Senator Brown.
Senator Brown.— Here.

The Clerk.— Senator Bussey.
Senator Bussey.— Here.

The Clerk.— Senator Carroll.
(No response.)

The Clerk.— Senator Carswell.
Senator Carswell.— Here.

The Clerk.— Judge Chase.
Judge Chase.— Here.

The Clerk.— Senator Coats.
Senator Coats.— Here.

The Clerk.— Judge Collin.
Judge Collin.— Here.

The Clerk.— Judge Cuddeback.
Judge Cuddeback.— Here.

The Clerk.— Judge Cullen, President.
The President.— Here.

The Clerk.— Senator Cullen.
Senator Cullen.— Here.

The Clerk.— Senator Duhamel.
Senator Duhamel.— Here.

The Clerk.— Senator Emerson.
(No response.)

The Clerk.— Senator Foley.
Senator Foley.— Here.

The Clerk.— Senator Frawley.
(No response.)

The Clerk.— Senator Godfrey.
(No response.)

The Clerk.— Judge Gray.
(No response.)

The Clerk.— Senator Griffin.
Senator Griffin.— Here.

The Clerk.— Senator Heacock.
(No response.)

The Clerk.— Senator Healy.
Senator Healy.— Here.

The Clerk.— Senator Heffernan.
(No response.)

The Clerk.— Senator Herrick.
Senator Herrick.— Here.

The Clerk.— Senator Hewitt.
Senator Hewitt.— Here.

The Clerk.— Judge Hiscock.
Judge Hiscock.— Here.

The Clerk.— Judge Hogan.
Judge Hogan.— Here.

The Clerk.— Senator McClelland.
(No response.)

The Clerk.— Senator McKnight.
Senator McKnight.— Here.

The Clerk.— Senator Malone.
Senator Malone.— Here.

The Clerk.— Judge Miller.
Judge Miller.— Here.

The Clerk.— Senator Murtaugh.
Senator Murtaugh.— Here.

The Clerk.— Senator O'Keefe.
Senator O'Keefe.— Here.

The Clerk.— Senator Ormrod.
(No response.)

The Clerk.— Senator Palmer.
Senator Palmer.— Here.

The Clerk.— Senator Patten.
(No response.)

The Clerk.— Senator Peckham.
Senator Peckham.— Here.

The Clerk.— Senator Pollock.
Senator Pollock.— Here.

The Clerk.— Senator Ramsperger.
Senator Ramsperger.— Here.

The Clerk.— Senator Sage.
Senator Sage.— Here.

The Clerk.— Senator Sanner.
Senator Sanner.— Here.

The Clerk.— Senator Seeley.
Senator Seeley.— Here.

The Clerk.— Senator Simpson.
Senator Simpson.— Here.

The Clerk.— Senator Stivers.
Senator Stivers.— Here.

The Clerk.— Senator Sullivan.
(No response.)

The Clerk.— Senator Thomas.
Senator Thomas.— Here.

The Clerk.— Senator Thompson.
Senator Thompson.— Here.

The Clerk.— Senator Torborg.
Senator Torborg.— Here.

The Clerk.— Senator Velte.
Senator Velte.— Here.

The Clerk.— Senator Wagner.
Senator Wagner.— Here.

The Clerk.— Senator Walters.
(No response.)

The Clerk.— Senator Wende.
Senator Wende.— Here.

The Clerk.— Judge Werner.
Judge Werner— Here.

The Clerk.— Senator Wheeler.
(No response.)

The Clerk.— Senator White.
Senator White.— Here.

The Clerk.— Senator Whitney.
Senator Whitney.— Here.

The Clerk.— Senator Wilson.
Senator Wilson.— Here.

The President.— Crier, open Court.

The Crier.— Hear ye, hear ye, hear ye, all persons having any business before this high Court of Impeachment held in and for the State of New York, may now draw near and give their attention and they will be heard.

The President.— The next business before the Court is to receive the report of the Committee on Rules, if they are ready to report.

Senator Wagner.— Mr. President, in behalf of the Committee on Rules I have the honor to submit the following report:

PROPOSED RULES OF THE COURT FOR THE TRIAL OF IMPEACHMENTS.

Rule I.

The Court shall, until otherwise ordered, meet daily, except Saturdays, at 10 A. M., and continue in session until 12:30 P. M., at which hour a recess shall be had until 2 P. M., when it shall meet again and continue in session until 5 P. M., when it shall adjourn for the day; except that on Mondays the Court will convene at 2 P. M., and sit until 6 P. M., and on Fridays the hour of final adjournment shall be 3:30 P. M. But this rule may be changed from time to time by the Court without previous notice being given. For want of witnesses or other reason the Court may take a recess or adjourn at a different hour of the same day, or to any hour of any future day.

RULE II.

The Managers and the Respondent shall be entitled to the process of the Court to compel the attendance of witnesses, which process shall be signed by the Clerk, and sealed with the seal of the Court, and attested in the name of the President of the Court, and may be in the form following:

"*The People of the State of New York, by the Grace of God Free and Independent:*

To .....

Greeting: You and each of you are hereby commanded and required that, laying aside all other business and all pretences and excuses whatsoever, you be and appear in your own proper persons before our Court for the Trial of Impeachments at ...., on the ..... day of ....., 1913, at ..... o'clock of that day, to be examined as witnesses and to testify the truth and give evidence on our behalf, (or) on behalf of the respondent hereinafter named, concerning certain Articles of Impeachment, then and there to be tried and determined before this Court, which have been made against WILLIAM SULZER, as Governor of the State of New York.

And we command you further that you bring with you and produce at the time and place aforesaid.....

.....

now in your custody or control, and all other deeds, evidences and writings which you have in your custody or power concerning the premises.

And hereof fail not at your peril.

Witness: The HON. EDGAR M. CULLEN, President of the Court for the Trial of Impeachments this ..... day of ....., 1913.

Attest:

.....

Clerk of the Senate and of the Court for the Trial of Impeachments."

Rule III.

All motions made by members of the Court, by the Respondent, by the managers, or by counsel, shall be addressed to the President of the Court, and, if he shall require, it shall be reduced to writing, and read at the desk of the Clerk; and the decision thereof, after the hearing of the counsel, shall, without debate, be made by the Presiding Judge. The President of the Court may, however, submit the same to the Court for its decision, or any member of the Court may require that the same shall be so submitted.

The decision shall be had without debate, unless a member of the Court may desire to debate the same.

Any member of the Court may move for a private consultation upon any question arising during the trial, and if the same shall be ordered by a majority of the votes of the members voting, the chamber shall be cleared of all but privileged persons, and such consultation shall be had in private.

The decision reached shall be publicly announced by the President of the Court.

All the proceedings in this rule referred to shall be entered upon the records of the Court.

Rule IV.

Each witness shall, as he is called, be sworn or affirmed by the Clerk, or the Deputy Clerk, in substantially the following form:

"You do solemnly swear (or affirm) that the evidence which you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer, as Governor of this State, shall be the truth, the whole truth, and nothing but the truth, so help you God (or this you do affirm)."

The introduction of evidence and the examination of witnesses and the conduct of the trial shall be governed by the rules now prevailing in the Supreme Court of this State. After the close of the examination of a witness by the Managers or by their counsel, and by the counsel for the Respondent, any member of the Court, after addressing the President of the Court for that purpose, may question the witness further if he so desires.

RULE V.

All questions as to the number of counsel to be heard in addressing the Court or in the examination of witnesses and the time to be allowed them, shall be left to the discretion of the President of the Court unless otherwise ordered by the Court.

RULE VI.

The final decision of the Court upon the articles preferred shall be taken by the President of the Court, who, upon each of the articles as it shall be separately read by the Clerk, shall, with its number propose to each member of the Court, in alphabetical order, the question, "Senator (or Judge), how say you, is the respondent guilty or not guilty, as charged in the ..... article of impeachment?" Each member of the Court, when so questioned, shall rise in his place and answer "guilty" or "not guilty", and the President of the Court shall also give his vote upon each article, either "guilty" or "not guilty"; and when the roll call shall be completed upon each charge, the result upon each charge shall be announced, and shall be entered upon the records of the Court. If two-thirds of the members present shall concur in the finding guilty, upon any one or more of said articles, the President of the Court shall in the same manner put, and the members of the Court shall in the same manner answer separately, the further questions:

"Shall William Sulzer be removed from his office of Governor of this State, for the cause stated in the article (or articles) of the charges preferred against him upon which you have found him guilty?"

"Shall William Sulzer be disqualified to hold any office of honor, trust or profit under this State?"

And the final judgment of the Court shall be certified by the President of the Court and Clerk of the Court.

RULE VII.

The President of the Court shall procure the oral testimony, taken by the stenographer, to be printed from day to day, for the use of the Court, the Managers and counsel. At the opening of the Court on the day after any part of the printed report of the

testimony shall be brought in, any member of the Court, the Managers or either of the counsel, may move to correct the same in any particular, to be then stated in writing.

RULE VIII.

The Clerk shall keep a book of record of the proceedings, orders and judgments of this Court, and the ayes and nays upon every question in that way decided. Such book of record shall be filed in the office of the Secretary of State upon the final adjournment of this Court.

The names of the members of the Court shall be arranged in alphabetical order upon the division list used by the Clerk in calling the roll upon all questions voted upon by the Court.

RULE IX.

The President of the Court shall appoint a committee of three members on order whose duty it shall be, subject to the direction of the President of the Court, to maintain order and enforce the proper performance of their duties by all officers and attendants of the Court.

The President.— Has every member of the Court received a copy of these rules?

Senator Wagner.— Yes.

The President.— Then it will be unnecessary for the Clerk to read them. Do you move the adoption?

Senator Wagner.— I move the adoption of the rules.

The President.— Any discussion on the subject? Does any gentleman wish to say anything on the subject of the proposed rules?

All those in favor please say aye; contrary minded, no; the motion is carried and the rules are adopted.

The next procedure for the Court is to consider the objections which were raised yesterday by the counsel for the respondent to the sitting and partaking in the Court and partaking in its acts, on the part of certain members of the Senate.

Mr. Herrick.— May it please you, Mr. President —

Senator Thompson.— Mr. President, I want to call the attention of the Presiding Officer to the fact that in this part of the room when counsel to the defense addresses the Chair, we cannot hear a thing — a word that counsel says, because he is standing with his back to us.

The President.— I am glad that the Senator has called the attention of the Court to it. In the future it will be necessary for counsel after addressing the President of the Court to turn and address the body of the Court. It is unfortunate the way the Court was seated, but it was an impossibility to avoid it, and therefore let us make the best of the situation, and that is the best suggestion that occurs to me — that is, that counsel after addressing the Court should then turn and address the argument to the body of the Court, and counsel will be near enough to the President so that he will hear the argument.

Mr. Herrick.— Mr. President, if there is any difficulty in your hearing me when I turn to address the remaining members of the Court, if you will notify me of it I will take a different position.

Mr. Herrick.— Mr. President, and representatives of the Court. What are your wishes? That we present these challenges separately?

The President.— No.

Mr. Herrick.— Or that we consider them as a whole?

The President.— I think the first question to be argued here, Judge Herrick, is the question whether a challenge lies before the members of the Court of Impeachment.

Mr. Herrick.— Yes, sir. That was the precise question that I am prepared to discuss, and I suppose that in order to do it, and do it intelligently, we would have to present our challenges so that you would know upon what our challenges are based.

The President.— Well, you can state generally the subject. The fundamental question is whether a challenge lies at all.

Mr. Herrick.— Yes, sir. I appreciate it. There are three challenges interposed here to Senators who were members of the

so-called Frawley Investigating Committee, which gives the opinions expressed in the report that they made to the Legislature and upon which —

The President (Interrupting).— Pause one moment. Is the counsel's position such that you members of the Court in that corner (indicating) hear him? Do you hear him now, Senators?

Senator Thompson and others.— Yes.

The President.— Proceed.

Mr. Herrick.— The other challenge is to Senator Wagner, the presiding officer, the president pro tempore of the Senate, based upon the ground that he is interested in the result of this trial because if the respondent is convicted upon this trial he will then succeed to the profits and emoluments of Lieutenant-Governor. This is not, if it may please you, Mr. President and members of the Court, a mere formal and perfunctory challenge made for effect, but it is made in the full belief of the strength of our position, and we think these gentlemen ought not to serve — without making any imputation upon their personal integrity. We are perfectly aware of what has taken place in previous impeachments; we are perfectly aware what has been decided upon previous occasions, but the world has moved since the last impeachment trial in this State. Our courts are more subject to keen scrutiny than ever; the Bar is more subject to criticism and scrutiny than ever before. This case, the greatest, I was going to say, in some respects, but in all respects of any that has been heard in this country since the trial of President Johnson, is arousing the attention of the whole country. What shall be done now and here is a precedent for future time. More, while this Court is convened for the purpose of trying the Governor of this State, the Court itself, I say with all due respect, is upon trial. It is not sufficient that like Cæsar's wife you should be virtuous, but you must be above suspicion in all your membership.

There can be no question here but what the Senators who participated in the investigation of the Frawley Committee have deliberately formed and expressed an opinion upon the guilt of the respondent, or upon each and every article of impeachment,

as clearly appears from the following excerpts. I have attached a copy of the report to the challenge interposed:

"During the time of these hearings and investigations William Sulzer, as Governor, has done everything in his power to withhold the truth and obstruct the production of evidence and the course of justice. At his instance and direction both Sarecky, his secretary; Colwell, his dummy, and Harris & Fuller, his brokers, have refused to testify before the Committee. His influence in the promotion of Sarecky to an important and lucrative position in the State Hospital Commission as Deportation Agent — substituting an inexperienced young stenographer for an experienced physician in that position — could only be a reward for Sarecky's silence in protecting the Governor from damaging disclosures.

"Governor Sulzer made a false public statement, when on July 30, 1913, he said that he was away campaigning and that he did not know of the campaign contributions omitted from his sworn statement. The Elkus check was endorsed by Sulzer personally and he acknowledged the letter of Elkus transmitting it as a campaign contribution.

"We submit to the Legislature that it was false when William Sulzer swore that he had received only $5,460 of campaign contributions and that he did so with full knowledge that he had received an amount many times that sum and had converted the same to his private uses; that he used contributions given to aid in his election for the purchase of stocks in Wall street which he or his agents still hold; that he has been engaged in stock market speculations at the time that he, as Governor, was earnestly pressing legislation against the New York Stock Exchange which would affect the business and prices of the Exchange; and that there was evidence before this Committee to sustain a finding that as Governor he has punished legislators who opposed him by vetoing legislation enacted for the public welfare, and has traded executive approval for bills for support of his direct primary and other measures.

"We submit to the Senate and Assembly that the facts above stated are sufficiently serious in character and are so violative of the laws of this State and the rules of fitness and conduct in high office, that the public interests demand some action in reference thereto whether through the exercise of powers of the Legislature, or by referring the facts and evidence to other duly constituted officers charged with duties in respect thereof."

Our challenge is founded upon the fundamental principle of justice that every man accused is entitled to be tried by an impartial tribunal, one which has not determined the question of his guilt or innocence in advance.

This is so familiar in all systems of jurisprudence, that I will not weary the Court with any lengthy discussion or citations of authorities, but will simply call your attention to a very few expressions of the courts.

In the case of Oakley v. Aspinwall (3 N. Y. 347), the leading case upon that principle in this State, the court amongst other things said:

"The first idea in the administration of justice is that a judge must necessarily be free from all bias and partiality. He cannot be both judge and party, arbiter and advocate in the same cause. Mankind are so agreed in this principle, that any departure from it shocks their common sense and sentiment of justice. * * * The provisions of our revised statutes on this subject profess to be merely declaratory of universal principles of law, which makes no distinction between the case of interests and that of relationship, both operating equally to disqualify a judge. Hence the statute declares that 'No judge of any court can sit as such in any cause to which he is a party or in which he is interested, or in which he would be disqualified from being a juror by reason of consanguinity or affinity to either of the parties.'

"After so plain a prohibition, can anything more be necessary to prevent a judge from retaining his seat in the cases specified? He is first excluded by the moral sense of all mankind; the common law next denies him the right to sit,

and then the revisers of our law declared that they intended to embody this universal sentiment in the form of statutory prohibition, and so they placed this explicit provision before the Legislature, who adopted without alteration and enacted it as the law. * * * The law applies as well to the members of this court as to any other; or if there be any difference, it is rather in favor of its more stringent application to the judges of a court of last resort, as well because of its greater dignity and importance as a tribunal of justice as that there is no mode of redress appointed for the injuries which its biased decisions may occasion. The law and the reasons which uphold it, apply to the judges of every court in the state, from the lowest to the highest."

In McLaren v. Charrier (5 Paige, 530, 533) the Chancellor said:

"And where a Master, or any other judicial officer of this court has been called upon in his official character of solicitor or counselor to give advice, or to prepare any papers or proceedings in a cause or matter pending or to be brought before the court, or where his law partner has been thus consulted or employed, although neither of them is the solicitor or counsel on record in the suit, nor has been regularly retained as such, he ought not afterwards to do any judicial or other act as master, etc., which requires the exercise of judgment or discretion, and which is in any way connected with the cause or matter in which he or his partner had previously been employed in a different character."

In case the People v. Hass (105 App. Div. 121) the Court said:

"However upright the judge, and however free from the slightest inclination but to do justice, there is peril of his unconscious bias or prejudice, or lest any former opinion formed ex parte may still linger to affect unconsciously his present judgment, or lest he may be moved or swayed unconsciously by his knowledge of the facts which may not be revealed or stated at the trial, or cannot under the rules of evidence. No effort of the will can shut out memory; there

is no art of forgetting. We cannot be certain that the human mind will deliberate and determine unaffected by that which it knows, but which it should forget in that process * * * and there is a further consideration beyond the security of the parties namely, the fair repute of justice for absolute impartiality."

In the case of McClaughry v. Deming (186 U. S. 49), the Court amongst other things said:

"It is the design of the law to maintain the purity and impartiality of the courts, and to insure for their decisions the respect and confidence of the community. Their judgments become precedents which control the determination of subsequent cases; and it is important in that respect that their decisions should be free from all bias. After securing wisdom and impartiality in their judgments, it is of great importance that the courts should be free from reproach or the suspicion of unfairness. The party may be interested only that his particular suit should be justly determined; but the State, the community, is concerned not only for that, but that the judiciary shall enjoy an elevated rank in the estimation of mankind."

The members of this Court act both as judges and jurors. They pass not only upon the law, but upon the facts, and surely in a case of this kind, here the honor and dignity of the State is involved, where for the first time in the history of our State, a Governor is upon trial for wilful misconduct in office, the tribunal to try him should be as free from any suspicion of bias and partiality as should a Court and jury formed to try a man for assault and battery or petit larceny.

Our Code provides as follows:

"Challenge for implied bias may be taken for all or any of the following causes and for no other." * * *

"4. Having served on the grand jury which found the indictment, or on the coroner's jury which inquired into the death of the person whose death was the subject of the indictment." * * *

"6. Having been one of a jury formally sworn to try the same indictment and whose verdict was set aside or which was discharged after verdict for the cause was submitted to it."

"7. Having served as a juror in a civil action brought against the defendant for the act charged as a crime."

Sec. 377 of Code of Criminal Procedure.

Impeachment proceedings have been likened to an indictment found by a grand jury. If service on a grand jury, or on a coroner's jury, or as a juror in a civil action brought against a person for an act charged as a crime, is sufficient to disqualify such person from afterwards serving as a trial juror upon the trial of the indictment, because of supposed bias upon the part of such person, how can it be said that the gentlemen who served upon the investigating committee, and made a report in which they declared their own opinion and judgment as to the acts charged, and which now constitute the articles of impeachment, should not likewise be disqualified from sitting in judgment upon the charges that they have themselves procured to be made.

If, as held in the case of M'Laren v. Charrier, a master or other official is disqualified from thereafter doing any judicial act as master or otherwise, which requires the exercise of judicial discretion in a matter in which he had theretofore been called upon in his official character to give advice, or to prepare any papers or proceedings, why does not the same principle apply to the Senators who have been instrumental in having these proceedings brought before this Court?

But without further proceeding with this line of discussion it will be conceded that in England the right to challenge any member of the House of Peers in impeachment cases has never been sustained. The honor and dignity of the peers of the realm are supposed to be so great and sublimated that they may not err; that they are raised above all bias and prejudice. They are not even required to be sworn, but render their judgment upon honor.

And in the case of impeachments brought for trial before the Senate of the United States, challenges of members of the Senate have not been sustained, even in the case of Senators, who as

members of the House of Representatives, had voted for the articles of impeachment, upon which they afterwards passed judgment in the Senate; and in the trial of President Johnson, where Senator Wade, who was the President of the Senate, and who, in the event of the President being convicted, would have become President, was challenged was thereafter withdrawn.

The reason for refusing to sustain challenges to the members of the United States Senate was founded upon the wording of the United States Constitution, which reads as follows: "The Senate shall have the sole power to try all impeachments." (Art. 1, sec. 3, subd. 6.) And that, therefore, they have no right to excuse any member of the Senate from taking part in the trial of impeachments, but that the Constitution made every member of the Senate a member of the Court for such trials.

The Constitution of our State reads entirely different.

The Court for the trial of impeachments in this State is composed not of the Judges of the Court of Appeals, not of the Senators, but of the major part of each, implying that some may not be of the Court by reason of disability, or refusal to act, or any other cause; and in providing that the Court for the trial of impeachments shall be composed, not of the entire membership of the Senate and Court of Appeals, but of the major part of them, it may well have been contemplated that some of the members of either the Court of Appeals or of the Senate would be disabled by reason of some of the causes which disable a Judge or Juror in civil or criminal proceedings in other courts, and it does not by any means follow from the reading of the Constitution that, no matter what part any Senator or Judge of the Court of Appeals may have taken in proceedings leading to the impeachments, or how they may be interested by family relationship, prejudice, preconceived opinion or other cause, they may not be challenged for such cause, but must be permitted to sit in this Court when they would not be so permitted to sit in any other Court of Justice in the land.

The cases of Dorn and Judge Barnard in this State when analyzed and properly understood are not decisive of this question.

In the case of Dorn, Senator Sanford was Chairman of the Committee that investigated the charges and made the Report

which resulted in the impeachment of Dorn. Sanford was challenged because of the part he had taken in said investigation.

He was an honorable man and asked to be excused from serving.

The Managers in substance stated that they had no desire to insist upon Senator Sanford becoming a member of the Court, if the Court had the power to sustain the challenge, or to excuse him from serving.

It was suggested during the discussion that if Sanford wished to absent himself, that that was his own business.

The challenge was not sustained and Mr. Sanford refused to vote upon any of the charges.

Upon the trial of Judge Barnard the question was raised as to the propriety of Judges Peckham and Allen, who were members of the Court of Appeals, serving as members of the Court for the trial of impeachments.

No formal challenge was made to their sitting, but both were highly honorable men, jealous of their fair fame, and asked to be excused.

Judge Peckham, while a justice of the Supreme Court, had come in conflict with Judge Barnard in an action known as the Erie and Susquehanna litigation; Judge Barnard setting aside some of the orders made by Judge Peckham, and Judge Peckham in turn setting aside orders made by Judge Barnard.

Judge Allen prior to his becoming a member of the Court of Appeals had been counsel in a litigation out of which grew some of the charges made against Judge Barnard, and the question arose as to whether they could act impartially in the case.

Amongst other things it was argued that if they were excused there was danger of the Court's being without a quorum if anything happened to two other members of the Court of Appeals, which would render them unable to serve; and it was also contended that they ought not to be excused because there were other articles of impeachment besides those founded upon the litigation in which Judges Peckham and Allen had been concerned, and that while they might be excused from voting upon some of the articles they ought not to be excused from acting upon all the articles.

Without any considerable argument, the objections to their

serving were overruled, and they served upon the trial, but were excused from voting upon many of the charges; Judge Allen upon articles five to nineteen, and Judge Peckham from nine to nineteen, inclusive. (Vol. I, p. 112; Vol. 3, pp. 2178; 79–80.)

Of course, the only purpose of having a Court is to pass upon the guilt or innocence of the person charged. What is the object of being a member of the Court except to pass upon the guilt or innocence of the person brought to trial, or to pass upon the question raised during the trial?

As Mr. Watson says in his work on the Constitution:

> "If the right to challenge is denied, where does the Senate get the right or power to excuse a Senator from voting. What is the difference in principle between challenging a Senator, thus preventing him from hearing the evidence and voting on the guilt or innocence of the impeached, and remaining and hearing the evidence and then being excused from voting as to its sufficiency." (Page 221.)
>
> "If a Senator or Judge of the Court of Appeals can for any reason be excused from voting because of presumed partiality or bias, then a challenge for the same reason ought to be sustained.
>
> "If Judges Peckham and Allen could be excused from voting upon the articles arising out of litigations in which they had been concerned, then the Senator here should be excused from voting upon all the articles of impeachment here, because he has been concerned in each and every one of them, and has expressed an opinion as to the guilt of this respondent.
>
> "The time has come when the highest court in this State should determine, once and for all, that its members should be composed, and composed only, of those who are free from even a suspicion of bias and partiality, and that a respondent before it is to be tried upon the same principles of justice that would be applied to the trial of the meanest criminal, for the smallest offense, known to the law.
>
> It is provided that the Court of Appeals shall consist of a given number of Judges, to whom may be added four

> Justices of the Supreme Court; that no more than seven shall sit; of whom five shall constitute a quorum, and four may render a decision. The only constitutional provision against their acting in any case is, that no Judge thereof shall sit and review a decision made by him, or by any court of which he was at the time a sitting member." (Art. 6, § 3.)

This provision of the Constitution was inserted because of the deep feeling, I may say almost scandal, that had been caused by judges of the general term sitting in review of their own decisions made at special or trial terms.

This constitutional provision is supplemented by section 46 of the Code of Civil Procedure, now section 15 of the Judiciary Law, reading:

> "A Judge shall not sit as such in, or take any part in a decision of a cause or matter to which he is a party or in which he has been an attorney or counsel or in which he is interested."

Now, will it be contended for a moment, that because the Constitution and the Code only provide that a judge shall not sit in review of a decision made by him or by a Court of which he was at the time a sitting member, and shall not sit or take part in the decision of any matter to which he is a party, or in which he has been attorney or counsel, or in which he is interested, yet, that if a member of the Court of Appeals, before becoming a member thereof, had been appointed referee, not to hear and decide, but simply to take evidence, and report his opinion thereon, and did so, and that a judgment had been rendered upon the evidence so reported, he could sit and review the appeal from that judgment?

Yet he would be in no different position than is the Senator here challenged, who has engaged in taking testimony and whose business it was to report thereon, and he did so report. He has reported the testimony and has expressed his opinion thereon and upon that testimony, together with the report so made by him, these articles of impeachment have been found.

Let the Court be so composed that not only will it be impar-

tial, and that this respondent is to be tried before a tribunal, no member of which has prejudged his case, and "the fair repute of justice for absolute impartiality" will be preserved.

The President.— Judge Parker.

Mr. Parker.— Presiding Judge and Associate Judges of this High Court of Impeachment.

Mr. Herrick.— I want to call the court's attention — one moment. In addition to that, under the rules that you have adopted, they are to be excluded from acting because your rules provide that the conduct of the trial shall be governed by the rules now prevailing in the Supreme Court of the State.

The President.— State that louder, please.

Mr. Herrick.— I say that your own rules just adopted exclude these gentlemen. Rule IV provides that the conduct of the trial shall be governed by the rules now prevailing in the Supreme Court of this State.

The President.— Now, Judge Parker.

Senator Thomas.— What rule was that?

Mr. Marshall.— Rule IV, second paragraph.

The President.— Are you through now?

Mr. Herrick.— Yes.

The President.— Judge Parker.

Mr. Parker.— Very respectfully, but yet most earnestly, I shall contend before this High Court that the Court is without authority to exclude from its membership any member of the Court. The people of the State of New York, our sovereign, created this Court; it wrought into existence by this mandate, and it said, and says, and has from the beginning, it shall be composed of the President of the Senate, the Judges of the Courts — the Senators or a majority of them, and the Judges of the Court of Appeals, or a majority of them. That is the mandate of the people, and you are here by virtue of that command, without power to say to any one of your members, and of any one

of them, whether a Judge of the Court of Appeals, whether a Senator of the State of New York, "you shall not sit in this court." We borrowed, or inherited, just as you choose, from England not only the great principles of liberty which our fathers incorporated into the Constitution and into the several constitutions, Federal and State, but the principles of equity which have governed our course of equity from its beginning, and the common law which predominates every State in the Union, and made a part of our law by the Constitution of each State; but we also borrowed from England the foundation for impeachment, as the result of which we find ourselves here to-day engaged in a court undertaking involving the honor, the integrity, the dignity and the protection of the Empire State.

As far back as 1388, it was held that no member of the House of Lords, constituting the court of impeachment in England, could be removed. From that time to this day that rule remained unbroken although there have been circumstances without number, in that country as in this, where there was much feeling and differences of view.

When the framers of the Constitution of this State in the year 1777, came to create our Constitution, which was ten years in advance of the Federal Constitution, they had before them all the experience of the past in England. They knew what had been accomplished there and they knew the rule that no member of an impeachment court could be challenged. Now, while there were some modifications made in this, our first Constitution, from that adopted in England, the foundation of it was the same; the changes were few, but one of the changes was, that the framers of our Constitution, for a greater safeguard, for a greater surety, introduced the judicial element, a body of men without special political interest, a body of men trained to the administration of the law, without prejudice, without political bias. There is a great improvement, as all of us here in this room who are interested in this procedure and appearing before your Honors, will agree. But while they made that change, there was one change which they did not make. They did not provide for a challenge. They did not, by any single word in that first Constitution, providing for impeachment, suggest that the experi-

ences of the past have proven unwise. On the contrary, while they injected the judicial element, a force and power for the greater stability of the court and that it might more surely work out justice, they did not give to anybody, any member of a court, any counsel appearing before it, the right of challenge of any member of this which is to be the most dignified court of the State. A court of impeachment should be so strong in numbers and should be composed only of jurists and statesmen, tried statesmen.

Now, there has been no change since, but let me call your attention now to a few precedents and just a bit of the argument which has been made in other forums. The argument we have heard to-day, not as ably and not as strongly presented as our friend Judge Herrick has presented it, probably, but the thread of the argument is whole, and it has been read many times before. It was made in the United States Senate long, long years ago. It has been made in high courts of impeachment like this in several states of the Union, as I shall show you presently. But first as to the Supreme Court of the United States. My learned friend seemed to suggest rather than to prove to you, as I thought, that there was some distinction between the Constitution of the Supreme Court — the Constitution of the United States on this subject and our own Constitution. In the case of the Supreme Court of the United States he said, you will observe that the Senate is the court of impeachment. Yes; but in the case of this State the Constitution says that the court of impeachment shall be composed of the President of the Senate, the Senators, or a majority of them, and a majority of the Court of Appeals. Is there any distinction between the two that any of you can work out? Is there any one of you that could for a moment be able to suggest that in the one there was no right of challenge, but in the other there was a right of challenge.

Let me call your attention now, please, to the — a little more fully than my friend did, to the impeachment of Andrew Johnson. Senator Hendricks made the challenge — and I ask you to have in mind as I present this to you, that this applies in my judgment to the case of Senator Wagner, only in the event that the Governor should be convicted in this impeachment, Senator

Wagner would not become Governor, but in the case of the consideration — in the event of the conviction of President Johnson, the Senator challenged would have become President of the United States, a proposition which no Senator taking part in that debate for one moment questioned in the forty pages of discussion. Senator Sherman, in opposition to the challenge, said (reading):

> "The Constitution of the United States declares that each state shall be entitled to two senators on this floor, and that court or tribunal for the trial of impeachment, shall be the Senate of the United States. My colleague is one of the senators from the State of Ohio. He is a member of this Senate, and is therefore made one of the tribunal to try all cases of impeachment. This tribunal is not to be tested by the ordinary rules that may apply in cases of civil law, for the mere interest of a party does not exclude a person from sitting as a member of the Senate for the trial of impeachment; nor does mere affinity or relations by blood or marriage. The tribunal is constituted by the Constitution of the United States and is composed of two senators from each state, and Ohio is entitled to two votes upon the trial of this case."

And each Senate district of this State is entitled to its vote upon the final judgment and in every stage of it.

"So far as the court is concerned," continued the Senator, "he is entitled to be sworn as one of the triers of this case as Senator from the State of Ohio, without regard to his interest in the result of the trial. His right as a senator from the State of Ohio is complete and perfect, and there is no exclusion of him on account of either interest, affinity, blood relationship or for any other cause."

Senator Howard said (reading): "The Constitution discloses, whatever may be the character of those members, whatever may be the relation to the accused or their interests in the question involved, they shall be component parts of the body trying the impeachment."

And again he says (reading): "The Constitution is mandatory. It is imperative in its very terms. It says it shall be

composed. When a senator offers, therefore, to take the oath, any objection to his taking the oath seems to be out of order because it implies that somebody, or somebody here, may disobey and disregard the imperative mandate of the fundamental law."

Senator Hennessey said (reading): "The Senate had no right to pass, directly or indirectly, any opinion, any reflection upon the right of any senator to participate in the proceedings that are taking place. The question is settled. It was settled when the credentials of the Senator were presented, and he was admitted to his seat. It brings us back to the proposition that we are a senate composed of constituent members, two from every state, sworn to do our duty as Senators of the United States; and when you take and exclude a senator from the performance of that duty, you assume functions which are not known in the Constitution and cannot for a moment be recognized. When you attempt to exercise the power you are attempting to exercise a power which the Senate of the United States, the Senate — no other parties or bodies forming any part of it, is the only body known to the Constitution of the United States for this purpose, and the Senate is composed of two senators from each state."

Senator Morton said (reading): "The Constitution settles the whole question in few words. The Senate shall have the sole power to try all impeachments, and itself shall constitute the tribunal. The Senate is the tribunal. Who compose that tribunal? The Senator from Ohio, Mr. Wade, is one of the men who now compose that tribunal." We cannot get away from that; after a discussion covering forty pages in which the great majority of the Senators spoke upon the subject, as the Senators from whom I have quoted, Senator Hendricks, to his credit, withdrew the challenge.

Away back in 1802 in the State of Pennsylvania, in the impeachment of Judge Addison, Judge Addison personally appeared in Court and over — in his own handwriting, and over his own signature he challenged three members of the Court of Impeachment; and he challenged them on the ground that they had been members of the House which had impeached him, and that they had voted to impeach him. Therefore, as he viewed our experience in the law, they ought to be excluded now. One of

the Senators asked permission to withdraw from the Senate. After a conference and after a consultation and argument, in which the judge himself participated, the Court refused to accept the excuse of the Senator, and refused to exclude any of the members challenged.

Before the United States Senate, as a Court of Impeachment, came the case of Judge Pickering. There were three members of that Senate who had been members also of the House when the impeachment articles — when the impeachment resolution had been passed, and the impeachment articles enacted and passed, and each one of these three men had voted in favor of them, and one of them asked to be excused, one of the Senators. The Senate, as a Court of Impeachment, did not exclude them. But I want to read to you three or four or five sentences from the opinions of one of the Senators, now constituting part of the Court of Impeachment, who had taken part in the preparation and presentation of the resolution in the Articles of Impeachment on behalf of the House, Senator Smith. Senator Smith declared that he would not be influenced from his duty by any false delicacy; that he, for his part, felt no delicacy upon the subject. The vote he had given in the other House to impeach Judge Pickering would have no influence upon him in this Court. His constituents had a right to his vote, and he would not by any act of his deprive or consent to deprive them of that right, but would play and exercise it upon this as upon every other question that might be submitted to the Senate whilst he had the honor of sitting in it.

In the matter of the Impeachment of John L. Brown in 1886, there was presented by two of the members also — by two of the members who had been a part of the investigating committee, which had made the investigation which resulted in impeachment charges being preferred against the superintendent of insurance of the State, they presented to the Court of Impeachment this request: "Having by order of the Senate taken part ——" that is one of the Senators; that is, these were men who stood as Senator Frawley — "Having by order of the Senate taken part in the investigation and the conduct of the office of auditor of the State, we have the honor to request that we be

excused from sitting as members of the Senate during these proceedings in the matter of the impeachment of the Hon. John L. Brown, Auditor of the State. Very respectfully, your obedient servants, T. W. Burdick and T. B. Glass." There was discussion as to whether or not they should be excused, and the Court reached the conclusion that they should not and refused to excuse them.

I now call your attention to the most recent case that we have been able to find, the matter of the impeachment of John H. Schively of the State of Washington in the year 1909. The two Houses were called in extraordinary session to investigate certain State departments, and as a result of that investigation the House impeached John H. Schively. There were forty-two members in the Court, forty-two Senators; the Senate alone constituting the Court of Impeachment. The respondent challenged sixteen of the forty-two members. He excepted to Senator Paulhamus, because of his bias and prejudice and personal enmity and because he had joined in a report to the Senate of the Legislature which recommended the investigation, and examination of the affairs of the Insurance Department, and after the filing of the report of the committee and while discussing the call of the extraordinary session of the Legislature out of which these articles of impeachment grew, and while discussing the report in so far as it related to this respondent, he said among other things: "If the public sentiment I have met with is the same elsewhere the Schively incident should be closed within 24 hours after 2 o'clock of the afternoon of June 23rd," which was the day of the trial. It is my belief that there will not be a single vote in either the House or the Senate for the retention of Schively in his present position. I have failed to find a single person that does not believe that Mr. Schively is absolutely guilty and should be removed from office." Senator Allen was also challenged because of bias prejudice and personal enmity and because he was Chairman of the Committee which investigated the Insurance Department and because he had expressed an opinion of the guilt of respondent. Senator Fishback was also objected to for the same reason and thirteen other Senators were objected to because they were members of the Senate but who authorized the appointment of the Committee for the purpose of the investigation. Before

giving you the result, and I may say in this connection that in each instance there was a separate ballot taken, that is, each challenge was passed on separately and all of the challenges were overruled by an overwhelming majority, but I want to read you a few sentences from the argument which was addressed to the Court on that occasion in behalf of the Managers:

> "Mr. President, in reply to the argument of counsel that 16 members of this body are disqualified from sitting as members of this tribunal, we should determine in what capacity you were acting, have convened as a Senate, you are a constitutional tribunal bound by no law which may limit you save such rules as you have or may hereafter adopt. You follow no precedents save those of the law and customs of parliamentary bodies. Your duty is not to punish or inflict punishment, but to ascertain and determine whether John H. Schively by reason of high crimes and misdemeanors or malfeasance in office, is longer fit to retain the office of insurance commissioner, and in determining that you are a law unto yourselves bound by the natural progress of equity and justice. Now, gentlemen, being a Senate and sitting as a Senate, can one Senator deprive another of his seat, except in a contempt proceeding? Have not your constituents some interest in this matter? Were you not elected to represent them in all matters coming before this body? If the framers of our Constitution had intended that any of you were subject to challenge would not they have provided some way by which such vacancies might be filled? If sixteen members of this honorable body may be unseated on motion of the respondent, may not others be removed and be barred from sitting upon motion of the Managers, and if this be done, or could be done, would not the accused escape justice? By such methods the Senate could be dissolved. One cannot say to another: 'You cannot sit. The Constitution gives you no such right.' It is not only your right but your sworn duty to remain, and to perform your duties to the State at large, and more particularly to the district you represent, sitting and acting in this matter the same as you would upon any other matter coming before the Senate.

> Remember that each Senator's seat and vote belongs to his constituents and not to himself, to be used according to his best judgment in all cases as they arise. This being a political matter, a question in which every person in the State is interested, is it not your right, aye, your duty, to discuss it and to form opinions of the guilt or innocence of the accused?"

Now, I said to you at the beginning that when the framers of our Constitution of 1777, a most remarkable document under all the circumstances as all of you will agree, when the framers came to prepare it, in behalf of the people of this State they adopted the precedents of England with some modifications and by the language of the Constitution they made it impossible for that court to exclude any member of it. Years have passed on and we have revised that Constitution several times. We have had these precedents. There are none against it that I have been able to find except one. There is one case in which a Senator was excluded on the ground that he was a brother of the accused, but so far as I am aware that is the only one and the circumstances of that case, I won't take time to consider, but their holdings on other propositions which were presented to them at that time seems to me to demonstrate that as an authority it has no value whatever, but all the others are in line with those to which I have called your attention to-day and I have called your attention to the major part of them. Now, when our Constitutional Conventions came to consider this subject, they were aware of these precedents, but did they amend the Constitution in this respect? Not at all. The year 1904 our Constitution was revised but the language of the Constitution on that subject remained the same as in 1846, and the Constitution does make provision for one challenge, but only one. That provision is that in case of the impeachment of the Lieutenant-Governor himself or the impeachment of the Governor, then the Lieutenant-Governor, otherwise described in that section as the President of the Senate, cannot sit. So that this subject of disqualification was in the mind of the men who drew that Constitution and again in 1904 when they began to select for disqualification, they selected only the person who was directly interested in the event. In the event

that he was on trial for impeachment the Constitution says that he shall not sit: In event that the Lieutenant-Governor is on trial for impeachment the Constitution says he shall not sit, and apparently in that case for the reason that in the event of conviction he would become the Governor of the State.

When they selected that exception in the strongest possible terms they affirmed that which had been the understanding from 1774 down to this date, that there was no right of challenge.

I want to refer then to the precedents of this State, but I will say a word about Senator Wagner in this connection. He is not disqualified by this Constitutional provision. He is not the Lieutenant-Governor. He is the President pro tem. of the Senate. The Lieutenant-Governor is in office and is the Lieutenant-Governor. True, for the moment he is discharging the duties of Acting Governor, but that is because the Constitution places upon him the responsibility of performing that duty, but he remains in office as the Lieutenant-Governor, and I charge you to remember that this Constitution states who may be disqualified, disqualifies the Lieutenant-Governor and the Lieutenant-Governor only.

Now then, I want to bring your attention to the precedents in this State, precedents which the Constitutional Convention in 1904 had before it, for they had happened since the Constitutional Convention of 1846, and I refer as the first instance to the case of Robert C. Dorn.

In Robert C. Dorn's case I want to read to you the challenge which the respondent made to Senator Sanford's sitting as a member of the High Court of Impeachment. This is it:

> " The counsel for the respondent in defense of his right, guaranteed to him by the Constitution and the laws to have an impartial trial, respectfully protests against Charles Sanford, one of the Senators of this State, being sworn as a member of this Court, and respectfully challenges him for principal cause and for that he is not indifferent as between the People of the State and the respondent; and as the ground for this challenge the counsel for the respondent respectfully submits that the said Charles Sanford, as a Senator and Chairman of the Select Committee appointed by the Committee to investigate the conduct of canals and official persons

connected therewith, and the conduct of the Canal Contracting Board of which respondent was a member by report dated this date, signed by him, has in substance adjudged the respondent guilty of some of the allegations contained in the articles now exhibited against him; and they further respectfully submit that this report of the said Senator as the ground of their accusation against the said respondent and upon that report and the accusations therein contained, the Assembly of this State framed and adopted the Articles of Impeachment now exhibited against the respondents and thereby the said Senator Charles Sanford is substantially the accuser of the respondent and has prejudged his case; and the counsel respectfully asks this Court to determine this challenge as shall seem just to the rights of the respondent."

After argument had been made the counsel to the Managers consented that the Senator be excused if the Court thinks it proper and legal. In that, they consented that he be excused, but that if the Court thinks it proper and legal — after still further debate Senator Sanford asked to be excused from acting as a member of this Court. Whereupon, on motion of Senator Hale, the Court went into private consultation. When the doors were opened, and the proceedings in open Court resumed the President stated, " The court, after consultation, have decided not to grant the request of Senator Sanford to be excused." Counsel for respondent were then given permission to renew their challenge if they so desired, which they did. Thereupon the Clerk of the Court, by direction of the President, proceeded to call the roll of the Court on the question, shall the challenge be sustained? And it was decided in the negative by a vote of 23 to 1.

Now, let me say a word about the case of Judge Barnard. That occurred in the 18th century. The one I have just read, of Commissioner Dorn, occurred in the year 1868.

Judge Allen and Judge Peckham both asked to be excused and it was the most natural excuse in the world that those judges should make. One of them, Judge Allen, as appears by the record and in the statement of reasons which he gave to the court why he felt impelled to ask to be excused was that as counsel he

had been interested in the very litigation which was some of that sort to be used as the grounds of impeachment of Judge Barnard, and he felt that he ought not to sit, and he did not desire to sit.

Judge Peckham, as Judge Herrick has told you, stated, among other things, that he had made orders which had come in conflict with the orders of Judge Barnard and those orders some of them formed a part of the articles of impeachment. That is the subject of that part of the articles of impeachment. He asked to be excused.

Here was the question squarely presented to this Court by two of the members of the Court of Appeals who asked to be relieved, no personal objection of course being made against them, and the question necessarily up for consideration was whether they should be excused and only that, and on motion of Senator Wood, after the matter had been presented and talked about the chamber was cleared for consultation. Later the court reported its decision not to excuse Judges Allen and Peckham.

I have taken too much of your time.

The Senator asks of me to call your attention to a proposition which is sound, and I think very self-evident to you all, and that is, that if it could be possible under our Constitution to permit challenges, it might be possible — not speaking about this particular case now — but it might be possible in a case of importance where you see it is required that there shall be a majority of the Judges and a majority of the Senators — it might be possible to so reduce the number by challenge as to make it absolutely impossible for the court to convene.

The point is, that the court might be reduced in that way by challenging a number of them so that there could not be a court and the court would go out of existence, and there could be no trial of the impeachment charges.

That undoubtedly is one of the reasons which was taken into consideration by the framers and the revisers of the Constitution from 1770 down to this date.

There are other reasons, but it is not worth while to consider those reasons here to-day — that is, that the Constitution says thus and so. This Court shall be composed of whom? And it names

them. It has continued that phraseology down to and including 1904 when it had an opportunity to change it. With the Dorn case and the Barnard case and the other cases before them, there was no change and there is no disqualification permitted by that Constitution, save one, and that one is not presented for the consideration of your honors.

The President.— Now in reply.

Mr. Herrick.— Mr. President, and Members of the Court, I shall occupy but a very little of your time in reply.

You will perhaps recall that I stated to you that we conceded from the outset that the precedents from England were that the Members of the House of Lords were not excused and I gave you the reason for it. Now we are told that we take ours from the Common Law of England. We do, except when that common law has been changed by our own constitution or when it is repugnant to the spirit of our own institutions, and our institutions are of that character that we don't believe that we can, no matter how high their station, equal to the peers of the realm of England, are fitted to sit in judgment where they have formed an opinion in advance of the guilt or innocence of those whom they are called upon to judge.

Now, it is stated, in almost the conclusion of his argument, that if our right is conceded, that then the court might be broken up by successive challenges. The answer to that is very plain, it seems to me, because of the law and of the cases which hold that where a judge under ordinary circumstances is disqualified to act by reason of interest or any of the other causes that disable him, yet if he constitutes the only tribunal before which the case must be tried, then, ex necessitate, not only entitled to serve but must serve, so that if the question came to that, that if our challenges endangered a majority of the Senate being present or a majority of the Court of Appeals being present, why then resort must be had to that principle of law, that a judge although interested, if there is no other judge before whom the case could be tried, must act, and is qualified to act.

Let me call your attention to another thing. In discussing the Barnard case my learned and distinguished friend says that it was

a most natural thing, in speaking of the requests of Judges Peckham and Allen to be excused, it was the most natural thing in the world that those judges should ask to be excused. Why naturally? Because they had something to do with some of the Articles of Impeachment that were brought against Barnard. If it was natural for them to ask to be excused, why isn't it natural for the Senators to be asked to be excused? Why do they not join with my learned friend in his anxiety to protect the dignity and honor of the State and ask to be relieved from service.

Furthermore, the requests of Judges Allen and Peckham were granted. They asked to be excused because it might be apprehended that their actions upon certain articles of impeachment might be influenced by their actions as Supreme Court judges; and, while they were not excused from acting entirely — because the argument was advanced, as I called your attention before, because there were some articles there with which they were not concerned, and with which it would be conceded they would have no bias or partiality, and they ought to sit — yet they were therefore excused from voting upon any article of impeachment based upon the litigation upon which they have been concerned.

One more. The Shively case has been referred to. I will quote: "You are not a court. You are not a court; furthermore, that they were laws themselves; they were to determine."

Now, the Senate of Washington was the tribunal to try. It was not constituted a court. It was not considered as a court. Members there did not act as a court. They refused to consider themselves as a court. A little different!

The Constitution makes you a court, the highest, most dignified court in this State, and yet subject to the rules of law just the same as any other court.

Again, I want to reiterate to you this distinction between the two Constitutions which my learned friend I don't think has explained away, the one that makes the Senate, that is, the Constitution of the United States, the Senate without any qualifications, the Senate the sole tribunal for the trial of impeachment; our Constitution which makes not the Senate, not the Court of Appeals or both together, but a major part of them — the major part of the members of each — a concession and an admission in

the language of the Constitution itself that there may be some members absent, disability; the same disability disqualifying a Judge of the Court of Appeals or a Judge of the Supreme Court from acting; but I do not want to weary you; affinity or consanguinity, which would not relieve a peer of England from serving even to pass judgment upon his own son or brother, but it would relieve you.

Could you be called upon to act in such a case as that? Now, as I have stated before, times have progressed; more is demanded of courts to-day. Their proceedings are watched with greater care. There is a greater demand that courts should be above suspicion in all their membership.

Impeachments are peculiar in their nature. They are likewise accompanied by partisan bias, either political or otherwise; and where it is of the utmost importance, the greatest importance, that the trial should be above all suspicion of unfairness; and how can that be, when from the very threshold, is taken into its membership men who admittedly have formed and expressed solemn and deliberate opinions upon every charge upon which the respondent is arraigned.

It is of just as much importance to you gentlemen of this Court, of more importance than it is to this respondent, that this challenge be determined upon its merits and that the sense of justice of mankind shall not be offended by continuing in this great tribunal men whose frame of mind is such that no matter how honest they may be, they come to this case prejudged, with their opinions of the guilt or innocence of this respondent formed, from which it is very difficult to escape.

One of the most difficult things in the world is to be intellectually honest, to be honest with ourselves; and all of those who have been engaged in the investigation of legal questions, know how difficult it is when we have formed an opinion in advance upon any legal subject to deal with it intellectually honest as we would if we had come to it with virgin minds.

Mr. Parker.— Presiding Judge, would the Court, with the consent of Judge Herrick, allow me two minutes — three minutes, to answer suggestions he has made? I have no objection to his reply.

Mr. Herrick.— I have certainly no objection if you can reply.

The President.—You shall have a reply, Judge Herrick.

Mr. Parker.— I want to call the attention of the Court to one suggestion that has been made by the learned counsel as to the challenging of the Judges of the Court of Appeals. He referred to the fact that Judges Allen and Peckham were challenged, and of course they could be excluded and should be excluded; but your Honor, suppose that in some recent proceeding in which a man sought to get out of prison by presenting a case which should finally reach the Court of Appeals, as it was hoped, before this Court of Impeachment was formed; suppose that case, which was decided by Justice Hasbrouck, had two days later been decided by the Appellate Division and had gone to the Court of Appeals, and the Court of Appeals had passed upon it — necessarily then passing upon the question of whether impeachment could take place at an extraordinary session and then this High Court of Impeachment had met, would you for a moment hold, or anyone of you, that they would be challenged; and yet their judgments had been rendered upon a vital question which is necessarily involved here.

If a Senator may be challenged upon this floor because he had expressed some opinion, so, too, could a judge of the Court of Appeals be challenged and prevented from sitting as a part of the Court of Impeachment.

The President.— Judge Herrick.

Mr. Herrick.— I doubted whether it would be a reply, Mr. President.

The President.—What is that?

Mr. Herrick.— I said I doubted whether it would be a reply, Mr. President. My only answer to it is this: That I have too much respect for the good sense of the judges of the Court of Appeals to assume that they would have made any such decision shortly in advance of a meeting of this body of which they were to be members, even if it had been brought before it. I should undertake to say that they would have held up the final decision

of that case until they had participated in the deliberations of this Court and awaited its determination. No such supposition can be indulged in.

Mr. Parker.— We have prepared a printed memorandum of the authorities and cases, which are at the service of the Court if they may be distributed.

Mr. Herrick.— We have a memorandum also printed. We shall be glad to distribute it.

The President.— The Presiding Judge is of the opinion that this matter should be determined now, but if my brothers of the Court are of the opinion that they want to consider that, of course they may adjourn to consider it at their pleasure; but, if no such request is made, we will proceed with the disposition of the question before us. No application being made the Court will proceed to state its disposition. In the first place, I shall say that under the privilege accorded to me under the rules which you have adopted, I intend to submit this case, this point for you to decide, and not decide it myself in the first instance, as I am authorized. But still I feel that by the power you have conferred upon me under your rules, it is my duty to at least express to you my opinion of what is the proper disposition of the question, and to state briefly my reasons. This challenge cannot be entertained is the uniform current of authority. All the precedents are against it. I equally think it is not sustained by principle. This as has been well said, is a Court. The Constitution declares it so, and it is elementary law to the lawmakers. The distinction between the disqualification of a juror and the disqualification of a judge is marked.

Now I shall speak to you of the question from a legal point of view, but do not consider that the queston is one which, in the vernacular of the day, may be termed a legal technicality. It is a question of power, and the question, has some member of this Court power to exclude other members of the Court, except for reasons defined by law, either in the Constitution or in the Statutes — that is the question. I should say in the first place, that there is this marked distinction between a challenge to a juror and a challenge to a judge, though the latter is an entirely

inappropriate term to apply to the disqualification of a judge. A disqualification of a juror may be waived by consent. A legal disqualification of a judge renders his judgment void, and consent will not permit him to act. Now, at common law, nothing disqualifies a judge from sitting, except direct interest in the case. It is doubtful whether the statutory disqualifications of members of the Court can be extended or in any way changed from those prescribed by the Constitution. The only disqualification prescribed by the Constitution is that the Lieutenant-Governor shall not sit on the impeachment of the Governor, but it is unnecessary to consider whether the statutory disqualifications do apply to the membership of this Court, for the reason that none of the objections suggested by the counsel for the respondent come within the statutory disqualifications. Even in an ordinary court of justice, members of a Court could not exclude one of their brethren. This was so decided by the Court of Appeals in the case of People v. Patrick. There it was sought to set aside and vacate a judgment of affirmance rendered by the Court on the ground of some relationship between counsel who had appeared in one stage of the proceedings and one of the judges of the Court, in fact the judge who wrote the opinion. We held that there being no statutory disqualifications, it was a mere question of propriety, and that must be judged by the judge himself, the determination of which he was the sole arbiter. Now, it seems to me, and in that we follow simply the earlier decision made some twenty odd years previous, in which the late Judge Rapallo wrote. Now, I think the principle is conclusive here. I do not mean to say that if any member of the Court feels that such action as he has previously taken in regard to the matters which are now to be tried, or his personal feelings towards the respondent are such as to disqualify him or to impair his ability to render a just and fair verdict, according to the oath which he has taken, that he may not appeal to the Court to be excused from sitting, but that appeal must be made by himself, and must be considered solely on his application, and cannot be considered as a challenge to his qualification to sit in the Court. Now, the question which will be submitted to you will be in this form, not as to the right to challenge, but it will be, shall the Court enter-

tain the challenge which has been interposed by the counsel for the respondent. Before the roll is called, I will ask would any of you like to speak on the subject.

Senator Herrick.— I move to go into executive consultation on this.

The President.— All in favor say aye. All opposed, no. The motion was lost.

The President.— The Clerk will call the roll.

The Clerk.— Senator Argetsinger.

Senator Argetsinger.— Will you be kind enough to restate the question.

The President.— Shall the Court entertain the challenge. If that is voted yes, then we will proceed to discuss the challenge on its merits. If that is decided in the negative, then it is we will announce the ruling that the challenge cannot be sustained, nor entertained to any member of the Court, constitutionally qualified as such.

Senator Argetsinger. — No.

The Clerk.— Judge Bartlett.
Judge Bartlett.— No.

The Clerk.— Senator Blauvelt.
Senator Blauvelt.— No.

The Clerk.— Senator Boylan.
Senator Boylan.— No.

The Clerk.— Senator Brown.
Senator Brown.— No.

The Clerk.— Senator Bussey.
Senator Bussey.— No.

The Clerk.— Senator Carroll.
Senator Carroll.— No.

The Clerk.— Senator Carswell.
Senator Carswell.— No.

The Clerk.— Judge Chase.
Judge Chase.— No.

The Clerk.— Senator Coats.
Senator Coats.— No.

The Clerk.— Judge Collin.
Judge Collin.— No.

The Clerk.— Judge Cuddeback.
Judge Cuddeback.— No.

The Clerk.— Senator Cullen.
Senator Cullen.— No.

The Clerk.— Senator Duhamel.
Senator Duhamel.— No.

The Clerk.— Senator Emerson.
Senator Emerson.— No.

The Clerk.— Senator Foley.
Senator Foley.— No.

The Clerk.— Senator Frawley.

Senator Frawley.— I ask that I may be excused from voting on this question at this time.

The President.— Gentlemen, will you excuse the Senator? All in favor will say aye. Opposed no. We will excuse you, Senator.

The Clerk.— Senator Godfrey.
Senator Godfrey.— No.

The Clerk.— Senator Griffin.
Senator Griffin.— No.

The Clerk.— Senator Heacock.
Senator Heacock.— No.

The Clerk.— Senator Healy.
Senator Healy.— No.

The Clerk.— Senator Heffernan.
Senator Heffernan.— No.

The Clerk.— Senator Herrick.
Senator Herrick.— No.

The Clerk.— Senator Hewitt.
Senator Hewitt.— No.

The Clerk.— Judge Hiscock.
Judge Hiscock.— No.

The Clerk.— Judge Hogan.
Judge Hogan.— No.

The Clerk.— Senator McClelland.
Senator McClelland.— No.

The Clerk.— Senator McKnight.
Senator McKnight.— No.

The Clerk.— Senator Malone.
Senator Malone.— No.

The Clerk.— Judge Miller.
Judge Miller.— No.

The Clerk.—Senator Murtaugh.
Senator Murtaugh.— No.

The Clerk.— Senator O'Keefe.
Senator O'Keefe.— No.

The Clerk.— Senator Ormrod.
Senator Ormrod.— No.

The Clerk.— Senator Palmer.
Senator Palmer.— No.

The Clerk.— Senator Patten.
Senator Patten.— No.

The Clerk.— Senator Peckham.
Senator Peckham.— No.

The Clerk.— Senator Pollock.
Senator Pollock.— No.

The Clerk.— Senator Ramsperger.

Senator Ramsperger.— I also ask to be excused from voting.

The President.—All in favor of the Court according that privilege to the Senator will please say aye. Opposed no. You are excused.

The Clerk.— Senator Sage.
Senator Sage.— No.

The Clerk.— Senator Sanner.

Senator Sanner.— I also ask to be excused from voting.

The President.— All in favor of the Court according that privilege to the Senator will please say aye. Opposed no. You are excused.

The Clerk.— Senator Seeley.
Senator Seeley.— No.

The Clerk.— Senator Simpson.
Senator Simpson.— No.

The Clerk.— Senator Stivers.
Senator Stivers.— No.

The Clerk.— Senator Sullivan.
Senator Sullivan.— No.

The Clerk.— Senator Thomas.
Senator Thomas.— No.

The Clerk.— Senator Thompson.
Senator Thompson.— No.

The Clerk.— Senator Torborg.
Senator Torborg.— No.

The Clerk.— Senator Velte.
Senator Velte.— No.

The Clerk.— Senator Wagner.

Senator Wagner.— I also ask to be excused from voting.

The President.—All in favor of the Court according that privilege to the Senator will please say aye. Opposed no. You are excused.

The Clerk.— Senator Walters.
Senator Walters.— No.

The Clerk.— Senator Wende.
Senator Wende.— No.

The Clerk.— Judge Werner.
Judge Werner.— No.

The Clerk.— Senator Wheeler.
Senator Wheeler.— No.

The Clerk.— Senator White.
Senator White.— No.

The Clerk.— Senator Whitney.
Senator Whitney.— No.

The Clerk.— Senator Wilson.
Senator Wilson.— No.

The Clerk.— Noes, 32.

The President.— The next procedure will be for the Clerk to read the Articles of Impeachment.

Senator Pollock.— I move the reading of the Articles of Impeachment be dispensed with.

The President.— All those in favor of the motion please say aye. Contrary, No. The noes have it. Proceed and read the articles, Mr. Clerk.

The Clerk thereupon read the Articles of Impeachment as follows:

STATE OF NEW YORK

No. 18.

IN SENATE,

August 13, 1913.

ARTICLES EXHIBITED BY THE ASSEMBLY OF THE STATE OF NEW YORK,

In the Name of Themselves and of all the People of the State of New York, against William Sulzer, Governor of said State, in Maintenance of their Impeachment against Him for Wilful and Corrupt Misconduct in His said Office, and for High Crimes and Misdemeanors.

Article I.

That the said William Sulzer, now Governor of the State of New York then being Governor elect of said State for the term

beginning January 1, 1913, he having been elected at the general election held in said State on the 5th day of November, 1912, was required by the statutes of the State then in force to file in the office of the Secretary of State within twenty days after his said election, a statement setting forth all the receipts, expenditures, disbursements and liabilities made, or incurred, by him as a candidate for Governor at said general election at which he was thus elected, which statement the statute required to include the amount received, the name of the person or committee from whom received, the date of its receipt, the amount of every expenditure or disbursement exceeding five dollars, the name of the person or committee to whom it was made and the date thereof, and all contributions made by him.

That, being thus required to file such statement, on or about the 13th day of November, 1912, the said William Sulzer, unmindful of his duty under said statutes, made and filed in the office of the Secretary of State what purported to be a statement made in conformity to the provisions of the statute above set forth, in which statement he stated and set forth as follows, to wit: that all the moneys received, contributed or expended by said Sulzer, directly or indirectly, by himself or through any other person, as the candidate of the Democratic Party for the office of Governor of the State of New York, in connection with the general election held in the State of New York on the 5th day of November, 1912, were receipts from sixty-eight contributors, aggregating five thousand four hundred and sixty ($5,460) dollars, and ten items of expenditure aggregating seven thousand seven hundred twenty-four and 9-100 ($7,724.09) dollars, the detailed items of which were fully set forth in said statement so filed as aforesaid.

That said statement thus made and filed by said William Sulzer as aforesaid was false, and was intended by him to be false and an evasion and violation of the statutes of the State, and the same was made and filed by him wilfully, knowingly and corruptly, it being false in the following particulars among others to wit:

It did not contain the contributions that had been received by

him, and which should have been set forth in said statement, to wit:

Jacob Schiff	$2,500 00
Abram Elkus	500 00
William F. McCombs	500 00
Henry Morgenthau	1,000 00
Theodore W. Myers	1,000 00
John Lynn	500 00
Lyman A. Spaulding	100 00
Edward F. O'Dwyer	100 00
John W. Cox	300 00
The Frank V. Strauss Co	1,000 00
John T. Dooling	1,000 00

That in making and filing such false statement, as aforesaid, the said William Sulzer did not act as required by law, but did act in express violation of the statutes of the State, and wrongfully, wilfully and corruptly and, thereafter, having taken the oath as Governor, and proceeded to perform the duties thereof, the said false statement thus made and filed by him caused great scandal and reproach to the Governor of the State of New York.

ARTICLE II.

That the said William Sulzer, now Governor of the State of New York, then being Governor elect of said State for the term beginning January 1, 1913, he having been elected at the general election held in said State on the 5th day of November, 1912, was required by the statutes of the State then in force to file in the office of the Secretary of State within ten days after his said election, as aforesaid, an itemized statement showing in detail all the moneys contributed or expended by him, directly or indirectly, by himself, or through any other person, in aid of his election, giving the names of the various persons who received such moneys, the specific nature of each item and the purpose for which it was expended or contributed; and was further required to attach to such statement an affidavit, subscribed and sworn to by him, such candidate, setting forth, in substance, that

the statement thus made was in all respects true and that the same was a full and detailed statement of all moneys so contributed or expended by him, directly or indirectly, by himself, or through any other person, in aid of his election.

That, being thus required to file such statement, and attach thereto such affidavit, on or about the 13th day of November, 1912, the said William Sulzer, unmindful of his duty under such statutes, made and filed in the office of the Secretary of State what purported to be a statement made in conformity to the provisions of the statute above set forth, in which statement he stated and set forth as follows, to wit:

That all the moneys received, contributed or expended by said Sulzer, directly or indirectly, by himself or through any other person, as the candidate of the Democratic Party for the office of Governor of the State of New York, in connection with the general election held in the State of New York, on the 5th day of November, 1912, were receipts from sixty-eight contributors, aggregating five thousand four hundred and sixty ($5,460) dollars, and ten items of expenditure aggregating seven thousand seven hundred and twenty-four and 9/100 ($7,724.09) dollars, the detailed items of which were fully set forth in said statement so filed as aforesaid.

That attached to such statement thus made and filed by him as aforesaid was an affidavit, subscribed and sworn to by said William Sulzer, stating that said statement was in all respects true and that the same was a full and detailed statement of all moneys received or contributed or expended by him, directly or indirectly, by himself or through any other person in aid of his election.

That said statement thus made and filed by said William Sulzer, as aforesaid, was false, and was intended by him to be false and an evasion and violation of the statutes of the State and the same was made and filed by him wilfully, knowingly and corruptly, being false in the following particulars, to wit:

It did not contain the contributions that had been received by him, and which should have been set forth in said statement, to wit:

Jacob Schiff	$2,500 00
Abram I. Elkus	500 00

William F. McCombs	$500 00
Henry Morgenthau	1,000 00
Theodore W. Myers	1,000 00
John Lynn	500 00
Lyman A. Spaulding	100 00
Edward F. O'Dwyer	100 00
John W. Cox	300 00
The Frank V. Strauss Co	1,000 00
John T. Dooling	1,000 00

That said affidavit thus subscribed and sworn to by said William Sulzer was false and was corruptly made by him.

That in making and filing such false statement as aforesaid, the said William Sulzer did not act as required by law, but did act in express violation of the statutes of the State and wrongfully, knowingly, wilfully and corruptly; and, in making said affidavit as aforesaid, the said William Sulzer, then being the Governor of the State of New York, unmindful of the duties of his office, and in violation of his oath of office, was guilty of mal and corrupt conduct in his office as such Governor of the State and was guilty of bribing witnesses, and of a violation of section 1620 of the Penal Law of the State; and, thereafter, having taken the oath as Governor, and proceeded to perform the duties thereof, the said false statement and affidavit thus made and filed by him caused great scandal and reproach to the Governor of the State of New York.

ARTICLE III.

That the said William Sulzer, then being the Governor of the State of New York, unmindful of the duties of his office, and in violation of his oath of office, was guilty of mal and corrupt conduct in his office as such Governor of the State and was guilty of bribing witnesses, and of a violation of section 2440 of the Penal Law of said State, in that, while a certain committee of the Legislature of the State of New York named by a concurrent resolution of said Legislature to investigate into, ascertain, and report at an extraordinary session of the Legislature then in session, upon all expenditures made by any candidate voted for

at the last preceding election by the electors of the whole State, and upon all statements filed by and on behalf of any such candidate for moneys or things of value received or paid out in aid of his election, and their compliance with the present requirements of law relative thereto,— while such committee was conducting such investigation, and had full authority in the premises, he, the said William Sulzer, in the months of July and August, 1913, fraudulently induced one Louis A. Sarecky, one Frederick L. Colwell, and one Melville B. Fuller, each, to withhold true testimony from said committee, which testimony it was the duty of said several persons named to give to said committee when called before it, and which, under said inducements of said William Sulzer, they and each of them refused to do.

That, in so inducing such witnesses to withhold such true testimony from said committee, the said William Sulzer acted wrongfully and wilfully and corruptly, and was guilty of a violation of the statutes of the State and of a felony, to the great scandal and reproach of the said Governor of the State of New York.

ARTICLE IV.

That the said William Sulzer, then being the Governor of the State of New York, unmindful of the duties of his office, and in violation of his oath of office, was guilty of mal and corrupt conduct in his office as such Governor of the State and was guilty of suppressing evidence and of a violation of section 814 of the Penal Law of said State, in that, while a certain committee of the Legislature of the State of New York named by a concurrent resolution of said Legislature to investigate into, ascertain, and report at an extraordinary session of the Legislature then in session, upon all expenditures made by any candidate voted for at the last preceding election by the electors of the whole State, and upon all statements filed by and on behalf of any such candidate for moneys or things of value received or paid out in aid of his election, and their compliance with the present requirements of law relative thereto,— while such committee was conducting such investigation and had full authority in the premises, he, the said William Sulzer, practised deceit and fraud and used threats and menaces, with intent to prevent said committee and the people of

the State from procuring the attendance and testimony of certain witnesses, to wit: Louis A. Sarecky, Frederick L. Colwell and Melville B. Fuller, and all other persons, and with intent to prevent said persons named, and all other persons, severally, they or many of them having in their possession certain books, papers and other things which might or would be evidence in the proceedings before said committee, and to prevent such persons named and all other persons, they, severally, being cognizant of facts material to said investigation being had by said committee, from producing or disclosing the same, which said several witnesses named, and many others, failed and refused to do.

That, in thus practising deceit and fraud and using threats and menaces as, and with the intent, aforesaid, and upon the persons before named, the said William Sulzer acted wrongfully and wilfully and corruptly and was guilty of a misdemeanor, to the great scandal and reproach of the Governor of the State of New York.

ARTICLE V.

That the said William Sulzer, then being the Governor of the State of New York, unmindful of the duties of his office, and in violation of his oath of office, was guilty of mal and corrupt conduct in his office as such Governor of the State and was guilty of preventing and dissuading a witness from attending under a subpoena in violation of section 2441 of the Penal Law of said State, in that, while a certain committee of the Legislature of the State of New York named by a concurrent resolution of said Legislature to investigate into, ascertain, and report at an extraordinary session of the Legislature then in session upon all expenditures made by any candidate voted for at the last preceding election by the electors of the whole State, and upon all statements filed by and on behalf of any such candidate, for moneys or things of value received or paid out in aid of his election, and their compliance with the present requirements of law relative thereto,— while such committee was conducting such investigation and had full authority in the premises, he, the said

William Sulzer, wilfully prevented and dissuaded a certain witness, to wit: Frederick L. Colwell, who had been duly summoned or subpoenaed, to attend as a witness before said committee hereinbefore named for the 8th day of August, 1913, from attending pursuant to said summons or subpoena.

That, in so preventing or dissuading said Frederick L. Colwell, who had thus been duly summoned or subpoenaed to appear before said committee on said day named, from attending before said committee pursuant to said summons or subpoena, the said William Sulzer acted wrongfully and wilfully and corruptly and was guilty of a violation of the statutes of the State and of section 2441 of the Penal Law, and was guilty of a misdemeanor, to the great scandal and reproach of the Governor of the State of New York.

ARTICLE VI.

That the said William Sulzer, now Governor of the State of New York, was duly and regularly nominated by the Democratic Party of said State as its candidate for Governor, at a regular convention of said party held in the city of Syracuse, on or about the 1st day of October, 1912, such nomination having been made on or about the 2d day of October, 1912, and he was, thereafter, until the 5th day of November, 1912, when he was elected to such office of Governor, such candidate of said party for said office.

That being, and while, such candidate for said office of Governor, various persons contributed and delivered money, and checks representing money, to him, said William Sulzer, to aid his election to said office of Governor, and in connection with such election; that said money and checks were thus contributed and delivered to said William Sulzer as bailee, agent, or trustee, to be used in paying the expenses of said election and for no other purpose whatever; that the said William Sulzer, with the intent to appropriate the said money and checks representing money, thus contributed and delivered to him as aforesaid, to his own use, having the same in his possession, custody, or control as bailee, agent, or trustee as aforesaid, did not apply the same

to the uses for which he had thus received them, but converted the same and appropriated them to his own use and used the same, or a large part thereof, in speculating in stocks, through brokers operating on the New York Stock Exchange, and thereby stole such money and checks and was guilty of larceny.

That among such money and checks thus stolen by said William Sulzer was a check of Jacob H. Schiff for $2,500; a check of Abram I. Elkus for $500; a check of William F. McCombs for $500; a check of Henry Morgenthau for $1,000; a check of John Lynn for $500; a check of Theodore W. Myers for $1,000; a check of Lyman A. Spaulding for $100; a check of Edward F. O'Dwyer for $100; a check of John W. Cox for $300; a check of Frank V. Strauss Co. for $1,000; a check of John T. Dooling for $1,000; and cash, aggregating $32,850.

That in so converting and appropriating said money and checks to his own use, the said William Sulzer did not act as required by law, but did act wrongfully and wilfully and corruptly, and was guilty of a violation of sections 1290 and 1294 of the Penal Law, and of grand larceny, and the same was done for the purpose of concealing, and said action and omission of said William Sulzer did conceal, the names of persons who had contributed funds in aid of his election and defeated the purposes of the provisions of the statute which required such publication that the people might know whether, or not, said Governor, after he had taken office, was attempting to reward persons who had so contributed in aid of his election, by bestowing official patronage, or favors, upon them, and thereafter, having taken the oath as Governor of the State of New York and proceeded to perform the duties thereof, the said appropriation to his own use, and his larceny of the same, caused great scandal and reproach of the Governor of the State of New York.

Article VII.

That the said William Sulzer, then being the Governor of the State of New York, unmindful of the duties of his office, and in violation of his oath of office, was guilty of mal and corrupt conduct in his office as such Governor of the State, and was guilty of

the corrupt use of his position as such Governor, and of the authority of said position, and of a violation of section 775 of the Penal Law of said State, in that, while holding a public office, to wit: the office of Governor, he promised and threatened to use such authority and influence of said office of Governor for the purpose of affecting the vote or political action of certain public officers; that among such public officers to whom the said William Sulzer promised, or threatened, to use his authority and influence as Governor, for the purpose of affecting their votes, said persons to whom such promises or threats were made were, Hon. S. G. Prime, Jr., a member of Assembly for the county of Essex for the year 1913, the promise being that if said Prime would vote for certain legislation in which said William Sulzer was interested and, as Governor, was pressing to passage, he, said Sulzer, would sign a bill that had already passed the Legislature and was pending before him, reappropriating the sum of about $800,000 for the construction of roads in said county of Essex and counties adjoining thereto, the said Governor at the time of said promise well knowing that the said Assemblyman S. G. Prime, Jr., was desirous of having said bill for said appropriation for roads signed by the Governor.

Hon. Thaddeus C. Sweet, a member of Assembly for the county of Oswego for the year 1913, the threat being that if the said Sweet did not vote for certain legislation in which said William Sulzer was interested and, as Governor, was pressing to passage, he, said Sulzer, would veto a bill that had already passed the Legislature and was pending before him, appropriating certain moneys for the construction of a bridge in said county of Oswego, the said Governor at the time of said threat well knowing that the said Assemblyman Thaddeus C. Sweet was desirous of having said bill for said appropriation signed.

That in so using the position and authority of the office of Governor the said William Sulzer acted wrongfully and wilfully and corruptly and was guilty of a violation of the statutes of the State, and of section 775 of the Penal Law, and of a felony, to the great scandal and reproach of the Governor of the State of New York.

ARTICLE VIII.

That the said William Sulzer, then Governor of the State of New York, unmindful of the duties of his office, and in violation of his oath of office, was guilty of mal and corrupt conduct in his office as such Governor of the State, and was guilty of the corrupt use of his position as such Governor and of the authority of said position, and of a violation of section 775 of the Penal Law of said State, in that, while holding a public office, to wit: the office of Governor, he corruptly used his authority, or influence, as such Governor to affect the current prices of securities listed and selling on the New York Stock Exchange, in some of which securities he was at the time interested and in which he was speculating, carrying, buying or selling, upon a margin or otherwise, by first urging, recommending and pressing for passage legislation affecting the business of the New York Stock Exchange and the prices of securities dealt in on said exchange, which legislation he caused to be introduced in the Legislature, and then by withdrawing or attempting to withdraw from the consideration of the Legislature such legislation which was then pending therein — all the time concealing his identity in said transactions by subterfuge.

That, in so using the position and authority of the office of Governor, the said William Sulzer acted wrongfully and wilfully and corruptly and was guilty of a violation of the statutes of the State, and of section 775 of the Penal Law, and of a felony, to the great scandal and reproach of the Governor of the State of New York.

And the said Assembly saving to themselves by protestation the liberty of exhibiting any other articles of impeachment against the said William Sulzer, Governor as aforesaid, and also of replying to the answers which he may make to the impeachment aforesaid, and of offering proof of the said matters of impeachment, do demand that the said William Sulzer, Governor as aforesaid, be put to answer all and every of the said matters, and that such proceedings, trial and judgment may be thereunder had and given as are conformable to the Constitution and Laws of the State of New York; and the said Assembly are ready to

offer proof of the said matters at such time as the honorable court for the trial of impeachment may order and appoint.

Albany, New York, August 13, 1913.

AARON J. LEVY,
PATRICK J. McMAHON,
ABRAHAM GREENBERG,
WILLIAM J. GILLEN,
THEODORE HACKETT WARD,
JOSEPH V. FITZGERALD,
TRACY P. MADDEN,
THOMAS K. SMITH,
HERMAN F. SCHNIREL.

ATTEST:

ALFRED E. SMITH,
Speaker,

GEORGE R. VAN NAMEE,
Clerk.

The President.— What answer does the respondent interpose to the articles presented by the Assembly?

Mr. Herrick.— May it please, Mr. President, we filed a notice of special appearance for the purpose of making — reserving to ourselves the right of making certain objections, which Mr. Marshall will now present.

Mr. Marshall.— May it please the court, the above named respondent, William Sulzer, now comes and appears specially —

Senator Brown.— Mr. President.

The President.— Senator Brown.

Senator Brown.— Before the counsel begins his argument, I would like to say that the members of the court at the back of the room did not hear the statement made by Judge Herrick, and I would like to have him re-state it.

Mr. Marshall.— It was merely that we have reserved the right to object to the jurisdiction of the court in our appearance as counsel.

The President.— And the grounds therefore the counsel are about to present to you, my brethren.

Mr. Marshall.— The above named respondent, William Sulzer, now comes and appears specially for the purpose of moving this Honorable Court to dismiss the proceedings instituted by the Assembly of the State of New York for his impeachment, on the ground that the said proceedings are without jurisdiction and null, void and of no effect, and in support of said motion the respondent alleges:

He was duly elected Governor of the State of New York at the general election held in November, 1912. He entered upon the performance of the duties of his office on January 1, 1913, having taken the constitutional oath of office.

The regular session of the Legislature of 1913 began on the first Wednesday of January, 1913, and adjourned sine die on May 3, 1913.

On May 8, 1913, the respondent, as Governor of the State of New York, by proclamation made in due form and pursuant to the Constitution and statutes of said State in such case made and provided, directed the Legislature of the State of New York, to wit, the Senate and Assembly of said State, to convene in extraordinary session, at the Capitol, at Albany, New York, on June 16, 1913, at 8:30 o'clock in the evening of that day.

Pursuant to said proclamation, the Legislature of the State of New York, to wit, the Senate and Assembly, duly convened at the Capitol, at Albany, New York, in extraordinary session, at the time named in said proclamation, and remained in extraordinary session, for the transaction of legislative business, until July 23, 1913, when, by concurrent resolution, alleged to have been adopted by a majority of the members duly elected to each branch of the Legislature, but, as respondent is informed and believes, in fact by the vote of less than a majority of the members of each of said branches of the Legislature, the Senate and Assembly, respectively, undertook to adjourn until the evening of August 11, 1913, at which time they respectively again convened, at the Capitol, in the City of Albany, and thereafter, at 5 o'clock in the morning of August 13, 1913, by a vote of seventy-nine (79) of its members,

the Assembly undertook to impeach the respondent, and thereupon, on the same day, preferred against the respondent, to the Senate of the State of New York, the articles of impeachment for the trial of which this Court has been convoked.

Neither in the proclamation of the respondent, as Governor of the State of New York, by which the extraordinary session of the Legislature was convened, nor in any message, communication, or otherwise, did the respondent recommend to the Legislature of the State of New York, or to its Assembly, the subject of his impeachment, or the consideration of any charges against him, or the taking of any action with respect to his impeachment, or with respect to any charges presented against him, in any manner whatsoever.

The Legislature and the several branches thereof, to wit: the Senate and Assembly, were convened in extraordinary session, solely for the purpose of taking action on various subjects which were recommended to them, respectively, for consideration by the respondent, none of which subjects included his impeachment, or the consideration of any charges presented against him.

Prior to the adoption by the Assembly of the State of New York of the articles of impeachment against the respondent, and the consideration of the subject of his impeachment, no notice whatsoever was given to the respective members of the said Assembly, that the subject of the impeachment of the respondent, or the consideration of charges against him, would be taken up at the alleged adjourned session beginning on August 11, 1913, or at any other time.

There were absent at said adjourned session, and at the time when the subject of the impeachment of the respondent was under consideration, and was voted upon, twenty-six (26) members of the Assembly, to none of whom was there given any notice of said proposed action. In consequence whereof, the respondent was deprived of the benefit and advantage of the attendance at said time, of the said members of the Assembly who were thus absent, and had not received notice as aforesaid of the proceedings with respect to his impeachment.

By reason of the premises, the action taken by the Assembly with respect to the impeachment of the respondent was without

constitutional authority, and the articles of impeachment which the Assembly preferred against the respondent to the Senate, were null, void and of no effect, and the proceedings which are now before this tribunal for trial do not constitute due process of law, and are in violation of the provision of the Constitution of the State of New York and of the Fourteenth Amendment to the Constitution of the United States, and this Court is without jurisdiction to entertain or determine the same.

Wherefore, the respondent prays for a dismissal of the said proceedings.

The President.— The Court desires to ask the Honorable Managers of the Assembly whether they intend to take issue on the facts stated in that special appearance, not on the conclusions. Of course, this Court is not expected to proceed with the technical attitude which is required in ordinary litigation but it would seem to be much better if we could get the issue narrowed down as far as possible.

Mr. Parker.— Before proceeding, Presiding Judge, will you permit the Managers and their counsel to withdraw for five minutes?

The President.— It is so near the hour of adjournment, it is hardly worth while to give you that privilege, and we will adjourn now. That will give you the opportunity.

Senator Carswell.— Mr. President, before the Court adjourns, I would like to move the adoption of the following resolution:

The President.— The Clerk will read the resolution.

The Clerk (reading):

> "Resolved, that the Members of the Assembly assemble in the Senate lobby promptly at the time appointed for the opening of court at each session and there await the arrival of the members of the Court of Appeals, and enter together the court room set aside for the Court for the trial of impeachments."

Senator Torborg.— I second the motion.

The President.— All those in favor —

Senator Murtaugh (Interrupting).— I didn't quite get that.

Senator Brown.— I didn't quite understand the resolution, Mr. President.

(The Clerk thereupon again read the resolution.)

The President.— I suppose the purport of the resolution is to proceed into the courtroom before its convening in the manner usually adopted in other courts. All those in favor of the motion please say aye.

(The members of the Court responded accordingly.)

The President.— Opposed, no.
(No response.)

The President.— Carried. Crier, adjourn the court till 2 o'clock.

The Crier.— Hear ye, hear ye, hear ye, this Court will take a recess until 2 o'clock this afternoon.

The President.— Now, gentlemen, keep your seats until the Court have had an opportunity to retire.

Thereupon, at 12:25 o'clock P. M. the Court took a recess until 2 P. M.

AFTERNOON SESSION, 2 P. M.

PRESENT:

Same as heretofore.

APPEARANCES:

Same as heretofore.

Mr. Brackett.— If the Court please, we will have our replication here in just a moment.

Mr. Stanchfield.— If the Court please, the form of the pleas to the jurisdiction interposed by the respondent necessitates upon the part of the Board of Managers the interposition of a replica-

tion. We had not the time during the recess hour to complete it and it will be here in a few minutes, but in order to expedite this proceeding I will call attention to those allegations in the pleas to the jurisdiction which are traversed by the Board of Managers. The first allegation is a conclusion of law as follows:

> "William Sulzer now comes and appears specially for the purpose of moving this Honorable Court to dismiss proceedings instituted by the Assembly of the State of New York for his impeachment on the ground that the said proceedings are without jurisdiction and null, void and of no effect."

That we deny.

The allegation as to the election of the Governor is admitted.

Likewise the allegation to the general effect that by proclamation in due form and pursuant to the Constitution he directed the Legislature of the State of New York to convene in extraordinary session at the Capitol at Albany on June 16th. Then follows this allegation:

> "Pursuant to said proclamation the Legislature of the State of New York, to wit the Senate and Assembly, duly convened at the Capitol at Albany, New York, in extraordinary session at the time named in said proclamation and remained in extraordinary session for the transaction of legislative business until July 23d, 1913, when by concurrent resolution alleged to have been adopted by a majority of the members duly elected to each branch of the Legislature, but as respondent is informed and believes, in fact with the vote of less than the majority of the members of each of said branches of the Legislature, the Senate and Assembly respectively undertook to adjourn until the evening of August 11, 1913, at which time they respectively again convened at the Capitol in the City of Albany, and thereafter at 5 o'clock in the morning of August 13, 1913, by a vote of 79 of its members the Assembly undertook to impeach the respondent and thereupon upon the same day preferred against the respondent to the Senate of the State of New York the Articles of Impeachment for the trial for which this court has been convoked."

We interpose a denial in effect that that concurrent resolution for adjournment was not regularly passed. We traverse the allegation and contend that it was regularly passed.

The next allegation to the effect that there was nothing in the proclamation of the Governor authorizing the special session to consider his impeachment is admitted by not being denied.

I think, if the Presiding Judge please, I will follow the course I have adopted instead of commencing now to read the replication.

The next allegation is to the effect that the Legislature and the several branches thereof, to wit, the Senate and Assembly, were convened in extraordinary session solely for the purpose of taking action in subjects which were recommended to them respectively for consideration by the respondent, none of which subjects included his impeachment or the consideration of any charges presented against him.

We traverse the allegation that it convened solely for the purposes indicated in the message by which he brought them together.

The President.— By that do you mean to raise any other than questions of law?

Mr. Stanchfield.— That raises simply, sir, the legal question as to whether, being in session under the call it had other power to act.

The President.— But the fact that there was no allusion to the subject matter, that is conceded.

Mr. Stanchfield.— Yes, sir.

The next allegation to the general effect that no notice whatever was given to the respective members of the Assembly that the subject of the impeachment of the respondent or the consideration of charges against him would be taken up at the alleged session beginning August 11, 1913, or at any time, we deny.

The next allegation that there were absent at said adjourned session at the time when the subject of the impeachment of the respondent was under consideration, and was voted upon, twenty-six members of the Assembly, to none of whom was there given any notice of said proposed action, we likewise deny.

Mr. Marshall.— May I interpose to ask you whether you mean the whole or only the last part.

Mr. Stanchfield.— We deny the latter part of that, technically speaking.

Mr. Marshall.— That stands like a negative pregnant, so I want to know what you do deny.

Mr. Stanchfield.— The latter part of it.

Mr. Marshall.— The latter part of it. You admit there were twenty-six absentees.

Mr. Stanchfield.— I think that is correct. I want to say to counsel in making these denials or admissions, if there is any mistake in the record we would ask permission to correct it, because the time has been very short to prepare the replication.

The President.— Each side shall be granted most liberally the right of amendments.

Mr. Stanchfield.— The conclusion of law that by reason of the premises the action taken by the Assembly with respect to the impeachment of the respondent was without constitutional authority, is denied; and we file, Mr. President, with the Court the formal replication.

(Replication filed.)

Mr. Marshall.— May it please the Court, as I read this replication, the only denial practically is the denial first that there was not an adjournment on the 23d of July, 1913, to August 11, 1913, by the vote of a majority of each of the two Houses, and then the second denial, as to the giving of notice to the members of the Assembly of the fact that the subject of the Articles of Impeachment would be considered at the session of the Assembly so beginning on the evening of August 11, 1913.

The only point as to which it might be necessary to present proof, therefore, would be the proposition as to the giving of notice to the various members of the Assembly.

I think that we will probably be able to agree as to the parties between now and Monday.

I would therefore, with the reservation of the privilege that we desire to do so, either to stipulate the facts or to swear a witness to show what notice, if any, was given, state that we will be prepared to argue the case upon the pleadings as they have been imposed.

The President.— If the President is correct in his recollection, with that exception the only issue of fact between you is the impeachment of the Legislature.

Mr. Marshall.— Yes, and the matter of notice.

The President.— Yes. Now, you accept their statement. They have challenged your statement.

Mr. Marshall.— I shall not take issue upon the statement as to the vote by which there was an adjournment from the 23d of July until the 11th of August. I do, however, wish to reserve the privilege of interposing evidence as to the character of notice, if any, that was given by the Assembly, or given to the members of the Assembly, of the subject of impeachment being taken up at the meeting held on the 11th of August.

The President.— Well, now, Mr. Stanchfield, what do you say to that objection?

Mr. Stanchfield.— I don't think, Mr. Presiding Judge, that we can agree on just the form or character of notice that was given. We have not the evidence at hand at the moment.

Mr. Marshall.— We can argue these questions later subject to the interposition of the evidence if the court reaches the conclusion that that is a material issue in the matter.

Mr. Stanchfield.— There is no objection from us.

The President.— Then, if you will agree, will you proceed. Now, the proposition that you intend to argue to the Court, Mr. Marshall, is that the Court — the Assembly had no jurisdiction at the Extraordinary Session to prefer charges of impeachment against the Executive, the Governor, who called it into extraordinary session.

Mr. Marshall.— Yes, sir, and that this Court therefore has no jurisdiction to consider the charges.

Mr. Herrick.— And that no notice was given.

Mr. Marshall.—And that no notice was given. That will be incidental.

May it please the Court, a valid impeachment by the Assembly is a condition precedent to the exercise of jurisdiction by this Court. Without such impeachment by the Assembly acting in conformity with the constitutional safeguards, there is such an absence of due process of law as will render the proceedings pursuant to which this tribunal has been convoked, a nullity. It has been frequently declared by the highest authorities that an impeachment by the House of Commons, the House of Representatives or the Assembly, is the equivalent of an indictment. The impeaching body acts as the accuser, or, as Blackstone phrases it, as "the grand inquest," and can only exercise that function when it observes the requirements of the organic law and has been set in motion in accordance with its provisions. Hence, if it should appear that it has acted without constitutional authority, or in contravention of the terms and conditions imposed by the Constitution, its action goes for naught and cannot be made the basis of any proceedings before a Court for the Trial of Impeachments. A valid impeachment is an essential prerequisite to the exercise of jurisdiction by the Court.

In the epigrammatic words of Mr. Justice Brown, who but a few days ago died in the fullness of years:

> "Jurisdiction is the right to put the wheels of justice in motion and to proceed to the final determination of a cause upon the pleadings and the evidence." Illinois Central R. R. Co. v. Adams, 180 U. S. 34.

The parallel between an impeachment and an indictment has always been recognized (4 Bl. Com. 259–262 and authorities hereafter cited). It was regarded as complete in the course of the discussions in the Johnson and Barnard impeachment trials. In

the quaint phrase of 1 Hale's Pleas of the Crown, 150, quoted by Blackstone (vol. 4, p. 259):

> "But an impeachment before the lords by the commons of Great Britain, in Parliament, is a prosecution of the already known and established law, * * * being a presentment to the most high and supreme court of criminal jurisdiction by the most solemn grand inquest of the whole kingdom."

It is, therefore, clear that the decisions relating to the finding of an indictment by a grand jury are of the utmost importance and should be deemed controlling whenever the validity of an impeachment is to be determined.

In Ex Parte Bain, 121 U. S. Ax. 1, a question very similar to that now to be determined was passed upon by the Supreme Court of the United States. There Bain had been indicted and convicted for having made a false report as the cashier of a National bank. The indictment charged that he had made the report with the intent to deceive an agent appointed by the Comptroller of the Currency to examine the affairs of the association. On motion subsequently made the Court ordered the indictment to be amended by striking out the reference to the Comptroller of the Currency. Thereupon Bain made an original application to the Supreme Court for a writ of habeas corpus, urging in support of his application that the Court which had convicted had no jurisdiction or authority to try him, since the indictment, as amended, was no longer the indictment of the grand jury. His contention was sustained, the Court holding that the declaration in article V of the Amendments of the Constitution that "no person shall be held to answer for a capital, or otherwise infamous, crime, unless on a presentment or indictment of a grand jury;" was jurisdictional; that no court of the United States had authority to try a person without an indictment or presentment in such cases; that the indictment referred to was the presentation to the proper Court under oath, by a grand jury, duly impanelled, of a charge describing an offense against the law for which the party charged might be punished, and that although an indictment had originally been found by the grand jury, when it was amended there was nothing to which the prisoner could be held to answer, and the indictment being void, there was nothing to try.

The Court, after reaching the conclusion that the indictment could not be amended, and quoting the language of Mr. Justice Field in 2 Sawyer, 667, in which he said that the grand jury was "an informing and accusing tribunal only," said, at page 12:

> "It has been said that, since there is no danger to the citizen from the oppressions of a monarch, or of any form of executive power, there is no longer need of a grand jury. But, whatever force may be given to this argument, it remains true that the grand jury is as valuable as ever in securing, in the language of Chief Justice Shaw in the case of Jones v. Robbins, 8 Gray, 329, 'individual citizens' 'from an open and public accusation of crime, and from the trouble, expense and anxiety of a public trial before a probable cause is established by the presentment and indictment of a grand jury'; and 'in cases of high offences' it 'is justly regarded as one of the securities to the innocent against hasty, malicious and oppressive public prosecution.' * * * We are of the opinion that an indictment found by a grand jury was indispensable to the power of a court to try the petitioner for the crime with which he was charged. * * *
>
> "It only remains to consider whether this change in the indictment deprived the court of the power of proceeding to try the petitioner and sentence him to the imprisonment provided for in the statute. We have no difficulty in holding that the indictment on which he was tried was no indictment of a grand jury. * * * Any other doctrine would place the rights of the citizen, which were intended to be protected by the constitutional provision, at the mercy or control of the court or prosecuting attorney; for, if it be once held that changes can be made by the consent or the order of the court in the body of the indictment as presented by the grand jury, and the prisoner can be called upon to answer to the indictment as thus changed, the restriction which the Constitution places upon the power of the court, in regard to the prerequisite of an indictment, in reality no longer exists."

In Harlan v. McGourin, 218 U. S. 448, this case was cited with approval.

In Post v. U. S., 161 U. S. 583, where an act provided that "all criminal proceedings instituted for the trial of the offences against the laws of the United States arising in the District of Minnesota shall be brought, had and prosecuted in the division of said district in which such offences were committed," it was held that the court had no jurisdiction of an indictment thereafter presented by the grand jury for the district in one division, for an offence committed in another division before the passage of the act, and for which no complaint had been made against the defendant. In sustaining this ruling, Mr. Justice Gray, quoting from In re Bonner, 151 U. S. 242, 256, 257, said:

> "As said by this Court in a recent case, 'in all cases where life or liberty is affected by its proceedings, the court must keep strictly within the limits of the law authorizing it to take jurisdiction, and to try the case, and to render judgment. It cannot pass beyond those limits, in any essential requirements, in either stage of these proceedings; and its authority in those particulars is not to be enlarged by any mere inferences from the law, or doubtful construction of its terms.' 'It is plain that such court has jurisdiction to render a particular judgment, only when the offence charged is within the class of offences placed by the law under its jurisdiction; and when, in taking custody of the accused, and in its modes of procedure to the determination of the question of his guilt or innocence, and in rendering judgment, the court keeps within the limitations prescribed by the law, customary or statutory. When the court goes out of these limitations, its action, to the extent of such excess, is void.'"

Justice Gray added:

> "Criminal proceedings cannot be said to be brought or instituted until a formal charge is openly made against the accused, either by indictment presented or information filed in court, or, at the least, by complaint before a magistrate." Virginia v. Paul, 148 U. S. 107, 119, 121; Rex v. Phillips, Russ. & Ry. 369; Regina v. Parker, Leigh & Cave, 459; s. c. 9 Cox Crim. Cas. 475.

In State v. Leese, 37 Neb. 92, s. c. 20 L. R. A. 579, Ex Parte

Bain, with other similar cases, was cited in a case which involved the validity of an impeachment proceeding. Under the Constitution of Nebraska, "the Senate and House of Representatives, in joint convention, shall have the sole power of impeachment, but a majority of the members elected must concur therein. Upon the entertainment of a resolution to impeach by either house, the other house shall at once be notified thereof, and the two houses shall meet in joint convention for the purpose of acting upon such resolution, within three days of such notification." The trial of the impeachment takes place before the Supreme Court. Pursuant to the constitutional provision, the legislature of Nebraska presented to the Court articles of impeachment against Leese, who had been attorney-general, charging him with misdemeanors in office during his incumbency of it. After answer had been interposed to the articles of impeachment exhibited, the Managers appointed by the Legislature, to prosecute the charges asked leave to amend, in matter of substance, certain of the specifications in the articles of impeachment. In sustaining its decision Mr. Justice Norval, speaking for the Court and referring to the terms of the Constitution which have been above quoted, said:

> "The authority thus given carries with it the power of the senate and house of representatives, under like restrictions, to adopt suitable articles and specifications in support of their impeachment, and likewise the authority to adopt and present additional or amended articles or specifications whenever it is deemed proper or expedient so to do. But such power can no more be delegated by the joint convention to a committee or managers of impeachment, appointed by it, than the legislature can confer authority upon a committee composed of members of that body to enact a law, or to change, alter or amend one which has been duly passed; and in neither case does the right exist. Impeachment is in the nature of an indictment by a grand jury. The general power which courts have to permit the amendment of pleadings does not extend to either indictments or articles of impeachment. The uniform holding of the courts, except where a different rule is fixed by statute, is that when an indictment has been filed with the court no amendment of the instrument, in matter of substance, can be made by the court, or by the

prosecuting attorney, against the consent of the accused, without the concurrence of the grand jury which returned the indictment. People v. Campbell, 4 Park. Crim. Rep. 386; Gregory v. State, 46 Ala. 151; Johnson v. State, Id. 212; McGuire v. State, 35 Miss. 366, 72 Am. Dec. 124; State v. Sexton, 10 N. C. 184, 14 Am. Dec. 584; State v. McCarty, 2 Pinney, 513, 54 Am. Dec. 150; Ex Parte Bain, 121 U. S. 1, 30 L. ed. 849.

"We have no hesitancy in holding that the managers have no power or authority to change in any material matter the specifications contained in the articles of impeachment exhibited against the respondent. If they could do that it necessarily follows that they could exhibit new articles of impeachment or specifications, preferring charges against the respondent not included in the original accusations made against him, and which the sole impeaching body, the joint convention of the legislature, might have rejected had they been submitted to it for consideration. To hold that the managers of impeachment have the right to do that would be to disregard both the letter and spirit of the constitution."

It is thus clear that, in order to give this Court jurisdiction, the articles of impeachment must have been adopted by the Assembly, on the vote of a majority of the members elected thereto, when lawfully convened; otherwise there would be an entire absence of jurisdiction, and this Court might as well be called upon to act on charges presented by a private citizen, by the managers of a political party, or by the anonymous enemies of the person sought to be impeached. Jurisdiction depends on the action of a constitutional body, duly called together and empowered to act and acting in strict conformity with the mandate of the Constitution.

II.

Continuing a study into the practical identity of an impeachment with an indictment, which is universally recognized, we will be aided in the present case by referring to the numerous decisions by which indictments have been declared invalid because of the improper constitution of the Court, in connection with which the grand jury finding the indictment sat, or the irregular manner in which such grand jury was convened.

Thus it is well established that an indictment found by a grand jury at a term of court held at a time unauthorized by law or at a term at which no grand jury is authorized is a nullity as are all proceedings based thereon.

State v. Brown, 127 N. C. 560; s. c., 37 Southeastern Rep. 330.
Davis v. State, 46 Ala. 80.

In the absence of a statute permitting it an indictment found or presented in vacation time by a grand jury convened in vacation time is void.

Miller v. State, 69 Ind. 284.
State v. Corbett, 42 Tex. 88, 90.

In order that an indictment or presentment may be valid the grand jury must have jurisdiction. Therefore, to render such indictment or presentment valid the court in which the grand jury is acting must have jurisdiction.

Shepard v. State, 64 Ind. 43.
Rex v. Jones, 6 C. & P. 137.

This is well illustrated by the decision in People v. Knatt, 156 N. Y. 302. The defendant was indicted for maliciously destroying property. The act was a misdemeanor and not a felony. The indictment was found by a grand jury without the certificate provided for by section 57 of the Code of Criminal Procedure, by a county judge or justice of the Supreme Court, to the effect that it was reasonable that such charge should be prosecuted by indictment. It was held that in the absence of such certificate jurisdiction of the grand jury did not attach and the court in which the indictment was found could only proceed by indictment in a case of that character on condition that the statutory certificate had been first filed.

See also Post v. U. S., 161 U. S. 583, *supra*.

It follows from these authorities that it is equally necessary to the validity of an indictment that the court in which it is found shall be legally organized and constituted, otherwise there is no jurisdiction.

In the case of Northrup v. People, 37 N. Y. 203, the Court of Appeals went further and decided that where the Justices of the Supreme Court of a judicial district in the performance of their duty to appoint the times and places of holding courts within their district designated that the trial term should be held at White Plains in and for the County of Westchester, and the court after convening at White Plains adjourned the further proceedings to the court house at Bedford in that county, the trial of an indictment for murder which proceeded at Bedford was void for want of jurisdiction. Judge Fullerton, writing for the court, said:

> "The power to fix the times and places of holding courts was committed by statute to all the judges and not to a single judge of a judicial district. In virtue of this power, White Plains was the only place appointed for holding the courts of oyer and terminer, for the year 1867, in the county of Westchester. It was not in the power of a single judge, at any time, and certainly not after all the judges had united in making the appointments, to appoint any other place for holding courts in that county. * * * The policy of the law is to inspire confidence in the administration of justice. It is the right of every citizen to know the times and places for holding the courts, where his liberty or property may be put in jeopardy, and that would be a lax system of legislation, indeed, which would leave them the subjects of sudden and perhaps capricious changes. Our legislature has not so left them; they have solemnly determined, that all the judges of each district shall unite in designating the places of holding courts, and require that the appointments thus made shall be published in the state paper, for three weeks, before any court shall be held in pursuance of them. To sanction the court at which the prisoner was convicted, is to annul entirely all these provisions.
>
> "I have not failed to consider the argument, that Bedford was one of the places which might have been designated for holding the court in Westchester county. But the answer to this proposition is, that it was not designated and published as the statute required, and for that reason was not a place for holding court."

This case was cited with approval in People v. Sullivan, 115 N. Y. 191.

In People v. Nugent, 57 App. Div. 542, this case was also cited. There a term of the county court of Erie county convened pursuant to an order which was not published as required by section 356 of the Code of Civil Procedure "once in each week for three successive weeks before a term is held," or "of four successive weeks previous to the time of holding the first term under such order" as required by the Code of Civil Procedure. The term was fixed for such a time that the four weeks' publication required under the latter code could not be made. It was held that the court was improperly convened and that an indictment found at such term was a nullity. Mr. Justice Williams said (p. 548):

> "These provisions should be complied with, and one of the essential prerequisites to the holding of a legally constituted term is the publication of the order appointing the same as provided for by the statutes of the State. No question of notice was involved in the Youngs case. The Northrup case seems to be an authority directly upon the point we are considering and never to have been overruled or criticised even. In a case of this kind it would be an unsafe rule to hold that a county judge, who has the sole power and authority to appoint the times for holding County Courts should be permitted to appoint and hold such courts at his own will, disregarding the statute, and making appointments for such times as to render a compliance with the statute as to publishing the order impossible. Such a rule would enable a county judge in times of public excitement, to call a term of his court into existence without any notice to persons charged with crime, and thus seriously interfere with their rights under the Constitution and the laws of the State. We think the court was in error in denying defendant's motion to dismiss the indictment in question, requiring him to plead thereto and to stand his trial thereon. * * *
>
> "The Court not having been properly convened and held, the indictment was invalid, as were all the proceedings had by the court with reference thereto."

In O'Byrnes v. The State, 51 Ala. 25, a conviction founded on an indictment presented by a grand jury not summoned on a venire by the judge, was reversed. The judge had issued a venire but on the return he quashed it and then without a new venire ordered the sheriff to summon more jurors and under this order the jury was summoned.

Bickell, J., said (pp. 28, 29):

> "We cannot doubt that a Grand Jury constituted in any other manner than prescribed by statute is, in the language of this Court, in State v. Brooks, supra, 'without legal warrant' a grand jury is not a mere assemblage of fifteen or eighteen persons in the jury box, *congregated by an order of the court, or by their own volition or at the summons or at the behest of an unauthorized person.*" * * *
>
> "If the court could legally set aside the venire drawn and summoned by the officers having authority to draw and summon it, the power is unlimited. *The jurors summoned under its order could be set aside* in the exercise of the same power, and so from time to time, until a jury was organized to meet the caprice and prejudice of the judge."

In U. S. v. Reed, 27 Fed. Cases 16134 (N. Y.), a motion was made to quash an indictment on various grounds, among which were irregularity in the marshal drawing jury, the fact that no order was made by district judge for a venire to summon the grand jury, and that one of the jurors was a volunteer and had never been summoned. Mr. Justice Nelson, then a member of the United States Supreme Court, and who had previously been Chief Justice of the Supreme Court of New York, said (pp. 729, 731):

> "By the law of New York certain preliminary notices are necessary in getting together a grand jury. Can these notices be entirely dispensed with, and a mere voluntary body come together as a Grand Jury, and yet no objection be afterwards made by a party indicted by such a body? Suppose the case of a grand jury not drawn at all but admitted to have been packed. Can a man indicted by it be cut off by the provisions of the Revised Statutes from raising the objection?" * * *

"It being thus (at common law) a ground of challenge to the array in a given case, that the jury have selected, summoned and returned by a person unfit to summon an indifferent jury to sit and judge in the case and it being the presumption that such a person would summon a jury not indifferent, but prejudiced, as respects the case to be heard, the challenge to the array, so authorized, necessarily though perhaps more remotely touches and reaches the proper qualifications of the panel to sit and act in a particular case."

III.

This brings us to a consideration of the provisions of the Constitution which relate to the jurisdiction of the Assembly to act as an informing and accusing body, and thus to set this tribunal in motion.

Article VI, section 13, of the Constitution, declares:

"The Assembly shall have the power of impeachment, by a vote of the majority of all the members elected."

Article III, section 1, provides for the creation of a Senate and Assembly. Section 2 provides that the Senate shall consist of fifty members, except as thereafter provided, and that the Assembly shall consist of one hundred and fifty members. Section 5 provides that the members of the Assembly shall be chosen by single districts, and gives directions as to their apportionment among the several counties of the State. Section 10 permits a majority of "each house" to constitute a quorum to do business. Section 11 requires "each house" to keep a journal of its proceedings, and the doors of "each house" to be kept open, except when the public welfare shall require secrecy, and then declares that "neither house" shall, without the consent of the other, adjourn for more than two days. Section 12 absolves the members from being questioned in any other place "for any speech or debate in either house of the Legislature."

Article X, section 6, reads:

"The political year and legislative term shall begin on the first day of January; and the Legislature shall, every year, assemble on the first Wednesday in January."

Finally, Article IV, section 4, which deals with the duties and powers of the Governor, among other things provides:

> "He shall have power to convene the Legislature, or the Senate only, on extraordinary occasions. At extraordinary sessions, no subject shall be acted upon, except such as the Governor may recommend for consideration. He shall communicate by message to the Legislature at every session the condition of the State, and recommend such matters to it as he shall judge expedient."

IV.

It is our contention, that the Assembly has no power of impeachment, except when duly convened at a regular session of the Legislature, or, if when convened at an extraordinary session of the Legislature, the Governor shall have recommended for consideration the impeachment of the person sought to be proceeded against.

The Impeachment Managers contend that the Assembly, whenever and however convened, has the power of impeachment, at any time. In fact it has been argued on their behalf, that, even though not convened, a majority of all of the members elected to the Assembly possess the power of impeachment.

The question thus presented is one of the most important that has ever arisen in the political and judicial history of this State. Upon the determination of it depend, the orderly government of this great commonwealth, the sanctity of the Constitution, and the "continuance of regulated liberty." For it is self evident that, if one branch of the Legislature can convene a majority of its members at any time or place, with or without notice to the others, or if such majority, without convening (and this is the logical consequence of the primary position taken by the Impeachment Managers), should be empowered to prepare articles of impeachment against any officer of the State, revolution and anarchy will inevitably result. Our government would effectually be Mexicanized.

In order to simplify the discussion of this proposition, fraught as it is with tremendous consequences, not only in the present case, but in cases which may hereafter arise, if a vicious precedent

be now established, it should first be considered as though it were one which involved the impeachment of a Judge of the Court of Appeals, or of a Justice of the Supreme Court, and the impeachment had been instituted at a time when the Legislature was not convened either at a regular or at an extraordinary session. For, if the contention of the Impeachment Managers is reduced to its logical results, it means that a self-convened fraction of the Assembly, or a majority of its members, even though not convened, may lawfully impeach any judicial or executive functionary of the State. At this stage of the argument, therefore, we may leave out of consideration altogether the fact, that, when the impeachment now sought to be tried was voted, the Legislature was convened in extraordinary session, and the Governor had not recommended, as a subject for action, the matter of impeachment.

Let us then suppose that the Legislature is not in session, and that it is sought to impeach a judge of one of our superior courts. There are one hundred and fifty members of the Assembly, scattered throughout the State, each county having at least one member. Each of them is engaged in his ordinary vocation. The business of some of them is apt to take them out of the State. It occurs to some individual, who may not even occupy an official capacity but who is possessed of powerful influence over a considerable number of the members of the Assembly, that he desires to have one or more of the Judges impeached. There is no way known to the Constitution or to the law, by which the Assembly can be convened, except automatically on the first Wednesday in January, at the regular session, or by the proclamation of the Governor to meet in extraordinary session. But the regular session may have adjourned sine die, and the Governor may have refused to call an extraordinary session, or may not even have been requested to call such session.

How can the Assembly be convened under such circumstances? At whose instance? Certainly not at that of the private individual, who is interested in bringing about the impeachment of a Judge. Certainly not by any member of the Assembly who should desire to assume authority to convene that body and to usurp the functions vested exclusively in the Executive. It is inconceivable that the one hundred and fifty members of the Assembly should spon-

taneously assemble, at one and the same place, and at one and the same time. Who is to summon the Assemblymen? Upon whose mandate are they to be called together? What is the penalty of the refusal of any of them to meet his fellows? Can the Sergeant-at-Arms who had served at the adjourned session forcibly bring them to the place of meeting? By whose sanction would he exercise control over the persons of the unwilling members? Where is the source of power which enables him, for such a purpose, and under such circumstances, to hale to a place of meeting and place under arrest the recalcitrant Assemblymen? What would be his defense to an action for false imprisonment, or assault and battery? Kilbourn v. Thompson, 103 U. S. 168.

Assuming that, by concert of action, by the exercise of potent personal or political influence, a bare majority of the elected members of the Assembly should be brought together, what is there to prevent them, under such circumstances, from meeting in secrecy, at a private house, in a hotel, at a political club, in an atmosphere supercharged with prejudice, hatred and malice, without giving notice to the other members of the Assembly, and to concoct under the knout of an absolute despot and under cover of darkness, articles of impeachment against a judicial officer who because not subservient has gained the enmity of him who initiated so extraordinary a convocation?

Who, under such circumstances, would be charged with the duty of giving notice to all the members of the Assembly? What would be the nature of the notice to be given? What length of time would intervene between the announcement of the purpose of convening the Assembly, and its actual coming together? Would one day's notice be sufficient? Would it be by public proclamation? If so, who would make the proclamation?

It is easy to perceive that such a situation is replete with the potentiality of fraud, connivance and collusion. Those in the secret of the projectors of such a movement might easily manipulate the proceedings so as to eliminate such members who might be reasonably expected to oppose impeachment, and who might be able by their arguments and presentation of facts to convince a majority that impeachment would be improper and injurious to the best interests of the State. If such procedure should now

be declared to be within the spirit of the Constitution, the time may come when, as a result of momentary excitement, the rhetoric of a demagogue, or headlong passion, a bare majority of the Assembly may be brought together by malign influences, for the very purpose of impeaching every member of the Court of Appeals and every Justice of the Supreme Court.

Under Article VI, Section 13, of the Constitution, "no judicial officer shall exercise his office, after articles of impeachment against him shall have been preferred to the Senate, until he shall have been acquitted." Under such circumstances, chaos and anarchy would reign, and grim revolution would stalk throughout the State. This is not a mere figment of the imagination. There have been frequent occasions when decisions by the highest courts of the land have been stigmatized by demagogues or by those impatient of restraint as calling for the impeachment of the judges who pronounced them, when adjudications which have given effect to constitutional limitations designed for the protection of life, liberty and property, have been attacked as reactionary and as the medium of accomplishing injustice; when inflammatory orators have, from the forum and the hustings denounced judges who fearlessly dared to do right, and, against their own sympathies, observed their oath to support the Constitution, which they were called upon to interpret.

If the contentions of the Impeachment Managers in the present case were upheld, would it not, at such periods of storm and stress as are apt to arise in every decade of our history, seal the fountains of justice and paralyze the arm of the judiciary? And this would be the more likely to occur if such an attack upon the judiciary were endorsed by influential or popular newspapers, or by individuals capable of fanning into flame the smouldering embers of animosity and to whet the voracious appetite of class-interest.

But, let us proceed and assume that the Assembly or a fragment of its membership, shall have thus convened itself, how shall it, in the case supposed, "prefer to the Senate" the articles of impeachment as contemplated by the language of section 13 of Article VI, which clearly ordains that they must be so preferred? How is the Senate to be convened? Under what con-

stitutional sanction? Upon whose mandate? At what time and where? What, until it so convenes, is to become of the impeachment, and what of the official against whom it is directed?

It is thus apparent that this situation bristles with insuperable difficulties, that perils lurk at every turn, and that the permanency of our Government is threatened if the Assembly or its members were thus permitted to convene or to act without convening.

Most careful research has failed to discover instances, in the history of Congress, and of the Legislatures of the several States of the Union, when a legislative body, or one of its component parts, has ever undertaken to initiate proceedings to convene itself, or to meet otherwise than at a regular or extraordinary session, called in conformity with the terms of the organic law. The absence of precedent is a most eloquent argument against the existence of such a power. It is recognized as contrary to the spirit of our republican institutions, for one of the co-ordinate departments of the Government to usurp such authority, and to undertake the exercise of a function which is impliedly denied it by the fundamental law.

Our Houses of Representatives and Assemblies are modeled upon the House of Commons; our Senates upon the House of Lords. Even in England, where Parliament is said to be omnipotent, where there is no written Constitution to limit and circumscribe and define its power, even that body is incapable of convening itself for any purpose. It can only assemble pursuant to a royal mandate, and it has only been in times of revolution when it ventured to act without such mandate. But, mark you, whenever it so acted, it was deemed necessary, by means of curative legislation, to confirm the acts of a Parliament thus irregularly assembled.

With his customary clarity, Blackstone deals with this subject (1 Black. Com. ch. 2, *150), saying:

> "1. As to the manner and time of assembling. The parliament is regularly to be summoned by the king's writ or letter, issued out of chancery by advice of the privy council, at least forty days before it begins to sit. It is a branch of the royal prerogative, that no parliament can be convened by its own authority, or by the authority of any except the

king alone. And this prerogative is founded upon very good reasons. For, supposing it had a right to meet spontaneously, without being called together, it is impossible to conceive that all the members, and each of the houses, would agree unanimously upon the proper time and place of meeting; and if half of the members met and half absented themselves, who shall determine which is really the legislative body, the part assembled or that which stays away? It is therefore necessary that the parliament should be called together at a determined time and place; and highly becoming its dignity and independence, that it should be called together by none but one of its own constituent parts; and, of the three constituent parts, this office can only appertain to the king; as he is a single person whose will may be uniform and steady; the first person in the nation, being superior to both houses in dignity; and the only branch of the Legislalature that has a separate existence, and is capable of performing any act at a time when no parliament is in being. Nor is it an exception to this rule that, by some modern statutes, on the demise of a king or queen, if there be then no parliament in being, the last parliament revives, and it is to sit again for six months, unless dissolved by the successor; for this revived parliament must have been originally summoned by the crown.

"It is true, that by a statute, 16 Car. I. c. I. it was enacted, that, if the king neglected to call a parliament for three years, the peers might assemble and issue out writs for choosing one; and, in case of neglect of the peers, the constituents might meet and elect one themselves. But this, if ever put in practice, would have been liable to all the inconveniences I have just now stated; and the act itself was esteemed so highly detrimental and injurious to the royal prerogative, that it was repealed by statute 16 Car. II. c. I. From thence therefore no precedent can be drawn.

"It is also true, that the convention-parliament, which restored King Charles the Second, met above a month before his return; the lords of their own authority, and the commons in pursuance of writs issued in the name of the keepers

of the liberty of England by authority of parliament; and that the said parliament sat till the twenty-ninth of December, full seven months after the restoration; and enacted many laws, several of which are still in force. But this was for the necessity of the thing, which supersedes all law; for if they had not so met, it was morally impossible that the kingdom should have been settled in peace. And the first thing done after the king's return was to pass an act declaring this to be a good parliament, notwithstanding the defect of the king's writ. So that, as the royal prerogative was chiefly wounded by their so meeting, and as the king himself, who alone had a right to object, consented to waive the objection, this cannot be drawn into an example in prejudice of the rights of the crown. Besides, we should also remember, that it was at that time a great doubt among the lawyers whether even this healing act made it a good parliament; and held by very many in the negative; though it seems to have been too nice a scruple. And yet out of abundant caution, it was thought necessary to confirm its acts in the next parliament, by statute 13 Car. II. c. 7 & c. 14.

"It is likewise true, that at the time of the revolution, A. D. 1688, the lords and commons, by their own authority, and upon the summons of the Prince of Orange, afterwards King William, met in a convention and therein disposed of the Crown and Kingdom. But it must be remembered this assembling was upon a like principle of necessity as at the restoration; that is, upon a full conviction that King James the Second had abdicated the government, and that the throne was thereby vacant; which supposition of the individual members was confirmed by their concurrent resolution, when they actually came together. And, in such a case as the palpable vacancy of a throne, it follows *ex necessitate rei,* that the form of the royal writs must be laid aside, otherwise no parliament can ever meet again. For, let us put another possible case, and suppose, for the sake of argument, that the whole royal line should at any time fail and become extinct, which would undisputably vacate the throne; in this situation it seems reasonable to presume, that the body of

the nation, consisting of lords and commons, would have a right to meet and settle the government; otherwise there must be no government at all. And upon this and no other principle did the convention of 1688 assemble. The vacancy of the throne was precedent to their meeting without any royal summons, not a consequence of it. They did not assemble without writ, and then make the throne vacant; but the throne being previously vacant by the king's abdication, they assembled without writ, as they must do if they assembled at all. Had the throne been full, their meeting would not have been regular; but as it was really empty, such meeting became absolutely necessary. And accordingly it is declared by statute 1 W. & M. st. 1, c. 1, that this convention was really the two houses of parliament, notwithstanding the want of writs or other defects of form. So that, notwithstanding these two capital exceptions, which were justifiable only on a principle of necessity, and each of which, by the way, induced a revolution in the government, the rule laid down is in general certain, that the king, only, can convoke a parliament.

"And this by the ancient statutes of the realm he is bound to do every year, or oftener, if need be. Not that he is, or ever was, obliged by these statutes to call a new parliament every year but only to permit a parliament to sit annually for the redress of grievances, and dispatch of business if need be. These last words are so loose and vague, that such of our monarchs as were inclined to govern without parliaments, neglected the convoking them sometimes for a very considerable period, under the pretence that there was no need for them. But to remedy this, by the statute 16 Car. II. c. 1, it is enacted that the sitting and holding of parliaments shall not be intermitted above three years at the most. And by the statute 1 W. & M. st. 2 c. 2, it is declared to be one of the rights of the people, that for redress of all grievances, and for the amending, strengthening, and preserving the laws, parliaments ought to be held frequently. And this indefinite frequency is again reduced to a certainty by statute 6 W. & M. c. 2, which enacts, as the statute of Charles

the Second had done before, that a new parliament shall be called within three years after the determination of the former."

In 1 Anson's Law and Custom of the Constitution (Edition of 1911), the author says, at p. 53:

"The existence of Parliament in modern times is kept as nearly continuous as possible, and hence the dissolution of one Parliament and the calling of another are effected by the same Royal Proclamation issued by the King on the advice of the Privy Council under the Great Seal. The proclamation discharges the existing Parliament from its duties of attendance, declares the desire of the Crown to have the advice of its people, and the royal will and pleasure to call a new Parliament. It further announces an Order addressed by the Crown in Council to the Chancellors of Great Britain and Ireland to issue the necessary writs, and states that this Proclamation is to be their authority for so doing.

"Until recent times it was the practice for a warrant under the sign manual to be given by the Crown to the Chancellor to issue the necessary writs. This has ceased to be done; an Order in Council is made directing that Writs shall be issued, but, as matter of fact, the Royal Proclamation is treated by the Crown Office in Chancery as the authority for the issue. * * * The writs were returnable according to the provisions of Magna Charta, within forty days of their issue; this period was extended after the union with Scotland to fifty days, and has been reduced by an act (15 Vict. c. 23) to thirty-five days."

At page 70 the author says:

"A dissolution brings the existence of Parliament to an end; a prorogation brings the session of Parliament to an end; an adjournment brings about a cessation of the business of one or other House for a period of hours, days or weeks. The adjournment of either House takes place at its own discretion, unaffected by the proceedings of the other House. The Crown cannot make either House adjourn; it has sometimes signified its pleasure that the Houses adjourn, but

there is no reason why its pleasure should also be the pleasure of the Houses. The Crown has, however, a statutory power to call upon Parliament to meet before the conclusion of an adjournment contemplated, where both Houses stand adjourned for more than fourteen days. The power is exercised by proclamation declaring that the Houses shall meet on a day not less than six days from the date of the proclamation.

"Prorogation takes place by the exercise of the royal prerogative; it ends the session of both Houses simultaneously; and terminates all pending business. A prorogation is to a specified date, but it may be necessary either to postpone or to accelerate the meeting of Parliament.

"* * * The Power to accelerate a meeting of Parliament which has been prorogued is governed by statute. An act of 1797 empowered the King to advance the meeting from a date to which prorogation had taken place to a date not earlier than fourteen days from the date of the proclamation and this period was reduced to six days by an act of 1870."

At page 302 the author says:

"It would seem then that, apart from the general expression of the Act of Edward III, the only statutory securities which we have ever possessed for the frequent summons and sittings of Parliament are the Act of Charles II, providing that Parliament shall sit at least once in every three years, and the Act of William and Mary to the effect that we shall not be more than three years without a Parliament. Nor do the statutes say what is to happen if the Crown fails to carry them into effect. The Long Parliament devised machinery to meet such a case, but subsequent Parliaments appear to have thought it disloyal to provide for the contingency that the Crown might not fulfil the law."

In 21 Halsbury's Law of England, title "Parliament," p. 687, the author says:

"A new Parliament can be called together for the transaction of business only by the Crown."

In Volume 6 of the same work, title "Constitutional Law," p. 389, the author says:

> "A new parliament cannot legally assemble without the royal writ, and though on certain occasions, through necessity occasioned by the King's absence or abdication, the two Houses have met and transacted business in an irregular manner without the royal writ, such meetings are termed Convention Parliaments, to distinguish them from Parliaments proper, and their proceedings are not recognized unless subsequently ratified by statute."

In a note the author adds:

> "This is significant in that it shows that Parliament acting on its own initiative and convening itself for the purpose of transacting business is *ultra vires* and irregular and to have any force and effect legally it is necessary that there be a subsequent ratification by that body constitutionally convened."

In providing in the Federal and State Constitutions for the meetings of the Congress and Legislature, the English model was departed from only so far as to provide a fixed date for the annual meeting of those bodies. Where the date of meeting is fixed, no summons is needed. But they cannot be convened in extraordinary session without the summons of the President in one case, and of the Governor in the other. There must be either a fixed date or a summons by authority. In New York the Legislature may act in extraordinary session only on subjects recommended to it by the Governor, so that our opponents have been obliged to concede that if the Assembly could rightfully impeach at an extraordinary session it could impeach of its own motion without being called by any sort of summons.

We have said that there is no precedent in any of our States where a Legislature attempted to convene itself. This is perhaps slightly but not entirely inaccurate, because, in People v. Hatch, 33 Ill. 9, the Supreme Court of that State had occasion to pass upon an attempt of the Legislature to convene itself after it had been adjourned to a certain day, before that day came. The Constitution of Illinois provided that, in case of disagreement between the two Houses with respect to the time of adjournment,

the Governor shall have power to adjourn the General Assembly by his proclamation. Acting under this authority, the Governor assumed to adjourn the General Assembly to a specified date. Both Houses adopted a protest against his action as illegal, and a large number of the members returned to their homes. No adjourning order of either House appeared on the journals, and for a period of ten days no entries were made in the journals. At the expiration of that time but before the date for re-convening fixed by the Governor an attempt was made to reconvene the legislature. It was held that the power did not exist, Mr. Justice Breese saying (p. 163):

> "The session having thus terminated, it is needless to inquire if it could be resumed at a future day, without a previous vote of the two houses, or by the proclamation of the Governor. Should a legislative body be dispersed by any sudden irruption, or insurrection, or by any external force, their power might, perhaps, remain, and the duty also, to re-assemble without any previous vote for such purpose. When such dispersion is the result of its own action, I know of no mode by which it can be brought together again, as a legislative assembly, in the absence of such previous vote, without a call from the executive.
>
> "Blackstone says, if, at the time of an actual rebellion, or imminent danger of invasion, the parliament shall be separated by adjournment or prorogative, the King is empowered to call them together by proclamation, with fourteen days' notice of the time appointed for their assembling. (1 Black. Com. 145, ch. 2.) The spontaneous meeting of all the members, except in the case stated, at a time not appointed by law, and without a previous vote for such purpose, would avail nothing. The executive, if he desired, could not recognize it as a legislative body, nor could it perform a legislative act, having any binding authority. This being so, it follows a less number than a quorum cannot meet and hold a legislative session, no matter under what convictions they may assemble, or what rights they may suppose they can preserve by such meeting. It would be a proceeding not sanctioned by our Constitution or laws."

So, in French v. State Senate, 146 Cal. 604; s. c., 80 Pac. Rep. 1031, 69 L. R. A. 556, the Senate of California expelled the petitioners for malfeasance in office, consisting of the taking of a bribe to influence their conduct as Senators. It was claimed that the Senate did not give them a hearing or afford them a trial upon charges made nor permit them to make any defence thereto, and that the charges of bribery were false. A writ of mandamus was prayed for to compel the Senate to restore them to membership therein. The application was denied, and in the course of the opinion Mr. Justice Shaw said:

> "An attempt by this court to direct or control the Legislature, or either house thereof, in the exercise of the power, would be an attempt to exercise legislative functions which it is expressly forbidden to do.
>
> "Even if the court should attempt to usurp this legislative function, there is no means whereby it could carry its judgment into effect and give the relief demanded. The thirty-sixth session of the Legislature has adjourned *sine die;* it is a thing passed, and cannot be reconvened upon the mandate of the judicial power. (Const. Art. 3.) The Senate could not reinstate the petitioners as members of that session except when lawfully in session. Nor can the body which composed the thirty-sixth session be again called together except in special session and at the behest of the Governor."

The great case of Luther v. Borden, 7 How. (U. S.) 1, indicates the possibilities which might result from a decision permitting the Legislature, or either of its component parts, to convene itself. The State of Rhode Island, until May, 1843, did not possess a Constitution such as those which had been adopted by the other States. It conducted its government under the charter granted by Charles II to the Colony of Rhode Island and Providence Plantations. In 1841 a portion of the people held meetings and formed associations, which resulted in the election of delegates to a convention to form a new Constitution, to be submitted to the people for their adoption or rejection. The convention framed such a Constitution, directed a vote to be taken

upon it, and declared afterwards that it had been adopted and ratified by a majority of the people of the State. The Charter Government did not, however, acquiesce in these proceedings, but in May, 1843, another Constitution, framed by a convention called together by the Charter Government, went into operation. In consequence of these proceedings, the State, for a time, was placed under martial law. The Constitution of 1843 was eventually recognized as controlling. Although there were serious evils which were sought to be obviated by those who brought about the adoption of the Constitution of 1841, they sought to make a virtue of what they believed to be a necessity, by convoking the Constitutional Convention on their own initiative. The inevitable consequence of such action was a miniature civil war, which would be most likely to be precipitated in any State of the Union, if a Legislature, or a branch of it, should undertake to convene itself under conditions such as would be likely to occur, if it should be now determined that such power may be exercised at any time, anywhere, and in any way, that the members of the Legislature or either of its branches or a part of them, may choose.

The soundness of our contention finds remarkable corroboration in the Constitution of Alabama adopted in 1901, where it was found necessary to make provision for the very situation which is presented in this case.

This was done in Article VII, Section 173, where after providing for the impeachment of various State officers before "the Senate sitting as a Court of Impeachment, under oath or affirmation, on articles or charges preferred by the House of Representatives," the Constitution proceeds:

> "If at any time when the Legislature is not in session, a majority of all the members elected to the House of Representatives shall certify in writing to the Secretary of State their desire to meet to consider the impeachment of the Governor, Lieutenant Governor, or other officer administering the office of Governor, it shall be the duty of the Secretary of State immediately to notify the Speaker of the House, who shall, within ten days after receipt of such notice summon the members of the House by publication in some news-

paper published at the Capital, to assemble at the Capitol at a day to be fixed by the Speaker, not later than fifteen days after the receipt of the notice to him from the Secretary of State, to consider the impeachment of the Governor, Lieutenant Governor or other officer administering the office of Governor. If the House of Representatives prefer articles of impeachment, the Speaker of the House shall forthwith notify the Lieutenant-Governor, unless he be the officer impeached, in which event he shall notify the Secretary of State, who shall summon, in the manner herein above provided for, the members of the Senate to assemble at the Capitol on a day to be named in said summons, not later than ten days after receipt of the notice from the Speaker of the House, for the purpose of organizing as a court of impeachment. The Senate when thus organized, shall hear and try such articles of impeachment against the Governor, Lieutenant-Governor or other officer administering the office of Governor as may be preferred by the House of Representatives."

Appendix A contains the Alabama provision with respect to extraordinary sessions of the Legislature. Here we find therefore, full recognition of the proposition that neither the Legislature nor a branch thereof can convene itself, and that when it is sought to impeach a Governor, if he fails to call the Legislature together in extraordinary session to act on charges made against him, full constitutional machinery for such convocation by other methods must be provided; otherwise action must be deferred until the regular session of the Legislature.

It has been urged in opposition to our contention of the Impeachment Managers that it is a general rule that, where the Constitution gives a general power, or enjoins a duty, it also gives, by implication, every opportunity for the exercise of the one or the performance of the other. This is, however, only a partial statement of the rule.

As shown in the leading case of Field v. People, 3 Ill. 79, it is modified by the further rule, that where the means for the exercise of a granted power are also given, no other or different means or powers can be implied, either on account of convenience

or because they may be more effectual. The settled doctrine is, that construction for the purpose of conferring power should be resorted to with great caution, and only for the most persuasive reasons.

The present case is one which admirably illustrates the wisdom of this qualification of the rule invoked by those who claim that the Assembly has the right of convening itself. Not only would such an interpretation confer an extraordinary and unusual power, one which has never been heretofore exercised, either in England or in the United States, but it would entirely ignore the power which is now lodged under the Constitution in the Governor to convene the Legislature in extraordinary session, as supplementing the explicit provision of the Constitution whereby both houses of the Legislature are convened automatically on the first Wednesday in January of each year. There is, therefore, no occasion for indulging in any implication in order to supply the means for convening the Assembly. They are fully provided for by the express terms of the Constitution, and where express power is granted, there is no occasion for the implication of other or different power.

V.

If the Assembly cannot convene itself and act when so convened, it scarcely requires argument to sustain the proposition that it cannot act without being convened, by independent and separate individual action.

It will suffice to consider the analogy presented by the authorities dealing with the acts of the directors of a modern corporation.

For if they cannot act, unless regularly convened, *a fortiori,* the Legislature of the State, and its several branches cannot so act.

When the Constitution refers to the functions performed by the Assembly in impeachment proceedings, it refers to action by the Assembly, as an entity, not to the Assemblymen who compose it. The Assembly, that is the constitutional organism known as such, has the power to impeach by the vote of a majority of all the members elected. The action taken is not that of the members but of the body which all of them taken together con-

stitute. It is inconceivable that the members of that body acting separately and singly, and not as an assembled whole can ever be considered as " the Assembly."

Directors or trustees of a corporation cannot vote and act as a board without coming together. Their assent to a proposition separately and singly is void. They are chosen to meet and confer and to act after an opportunity for an interchange of ideas. They cannot vote or act in any other manner.

Brikerhoff Co. v. Boyd, 192 Mo. 597.
Demarest v. Spiral, etc. Co., 71 N. J. L 14.
Audenreid v. East, etc., Co., 68 N. J. Eq. 450.
Tradesman Pub. Co. v. Knoxville Car Wheel Co., 91 Tenn. 634.
Re Haycraft, etc., Co., (1900) 2 Ch. 230.
Pierce v. Morse-Oliver Co., 94 Me. 406.
Buttrick v. Nashua R. R. Co., 62 N. H. 413.
Columbia Bank v. Gospel Tabernacle, 127 N. Y. 361.

The separate assent of the board of trustees of a religious corporation to the performance of a corporate act is void. The members must meet and confer before their action can have any validity.

Peoples Bank v. St. Anthony's Church, 109 N. Y. 512.

A separate assent of a township committee to the construction of a street railway is illegal.

West Jersey Traction Co. v. Camden Co., 53 N. J. Eq. 163.

Where a tax is assessed by two trustees in meeting assembled, who subsequently obtain the separate and private assent of the third trustee, the action taken is void.

Keeler v. Frost, 22 Barb. 400.
Schuman v. Seymour, 24 N. J. Eq. 143.

The members of a board of highway commissioners cannot authorize or ratify a contract by separate approval. A meeting is necessary.

Taymouth v. Koehler, 35 Mich. 22.

A majority of a school board cannot act separately and singly, no meeting being held.

Herrington v. District, 47 Iowa, 11.

In Cammeyer v. United German Lutheran Churches, 2 Sandf. Ch. 208, the learned Vice-Chancellor said, in a case which depended upon the validity of the action of the board of trustees of a church; where it appeared that a majority of the trustees, while acting as a council, had approved of the adoption of certain resolutions which indicated their intention with regard to the matter which was to be acted upon by the board of trustees:

> "The conference or council was a board clothed with the spiritual regulation and government of the church. It had nothing to do with the control or direction of its temporalities. The statutes vested those duties in the trustees. The fact that a majority of the trustees were present, acting as a council, does not make the resolutions of the council the act of the board of trustees. Suppose in the case of a bank, that at a general meeting of the stockholders certain resolutions should be adopted to sell land, or do any other corporate act, and it should be made to appear that all the directors of the bank were present assenting to what was done; the corporation would not be bound unless the directors at a meeting of the board, should concur in the resolutions.
>
> "The directors in the bank, and the trustees in this case, are, by the charter, the select class or body which is to exercise the corporate functions. In order to exercise them, they must meet as a board, so that they may hear each other's views, deliberate, and then decide. Their separate action, individually, without consultation, although a majority in number should agree upon a certain act, would not be the act of the constituted body of men clothed with the corporate powers. Nor would their action in a meeting of the whole body of corporators, or of another and larger class in which they are but a component part, be a valid corporate act. In thus acting they are distinguishable from their associates, and their action is united with that of others who have no proper or legal right to join with them in its exercise. All

proper responsibility is lost. The result may be the same that it would have been if they had met separately, and it may be different. In the general assemblage, influences may be brought to bear on the trustees, which, in their proper board, would be unheeded; and no one can say with certainty, that their vote in the latter event would have been the same.

"It was held in the Case of the Corporations, 4 Coke's Rep. 77, b, that where the power to make a by-law was in the mayor and aldermen, a by-law made by the mayor, aldermen and commonalty was void. And see Ex parte Rogers, and note a, 7 Cowen, 526, 530; The King v. Miller, 6 Term Rep. 268; Willcock on Municipal Corporations, 101, 102; Brown v. Porter, 10 Mass. 99, per Sewall, J."

This principle has been extended to the action of political bodies.

Thus, in People ex rel Henry v. Nostrand, 46 N. Y. 375, 383, the validity of the action of two members of a board of highway commissioners, which was by statute composed of three members, during the existence of a vacancy in the board was under consideration. Chief Judge Church said:

"The statute appointing them confers the power upon three and provides that whenever the number of commissioners is reduced below three the vacancy shall be filled by the county judge. It is quite evident that the legislature intended to intrust the powers conferred to three persons, and that the judgment of that number should be requisite to the discharge of their duties. I am not aware of any principle, which enables two persons to discharge a public duty expressly devolved upon three without consultation with the third. At common law two could act in such a case, but it was indispensable that the three should meet and deliberate upon the subject. (Crocker v. Crane, 21 Wend. 211; 7 Cow. 526, note a; 22 Barb. 400) * * * A majority may perform the duty after all have met and deliberated, but two cannot do this when the office of the third is vacant any more than they could if the third had not met or been consulted."

It is likewise an elementary proposition, that stockholders can hold elections and transact such other business as they as a body are qualified to transact, only at corporate meetings duly called and convened. Consequently, all action taken elsewhere than at such a meeting, and all separate consents by individual stockholders, are void.

Commonwealth v. Cullen, 13 Pa. St. 133.
Livingston v. Lynch, 4 Jongs. Ch. 573, 597.
Torrey v. Baker, 83 Mass. 120.
De La Verne Co. v. German Sav. Institution, 175 U. S. 40.

In other words, a corporation and its stockholders are separate and independent entities, and the action of stockholders can only bind the corporation when they are duly convened at a meeting held for the purpose of performing a corporate act.

Medina G. & E. L. Co. v. Buffalo L. T. & S. D. Co., 162 N. Y. 67.
Saranac &c. R. R. Co. v. Arnold, 167 N. Y. 368.
MacDonnell v. Buffalo L. T. & S. D. Co., 193 N. Y. 92.
England v. Dearborn, 141 Mass. 590.

VI.

What is true in the case of a corporation as to the necessity of notice to its directors with respect to the holding of a special meeting and of the business to be transacted thereat, must be likewise true of a self convened meeting of the Legislature or of one of its branches, especially when it is claimed that it is to act not in the exercise of its usual legislative functions, but judicially.

A special meeting at which less than all of the board of directors of a corporation attend, no notice having been given to the other directors as to the time for holding the meeting and the business to be transacted by it, invalidates the action of those who attend. Every director has not only the duty, but the right, to be present, in order that he may present to his associates the views which he entertains and enable him to persuade them to

adopt his views rather than those which they are inclined to act upon.

The very purpose of a deliberative body would be destroyed if only a portion of those who have a right to attend to be heard and to vote, are enabled to avail themselves of those privileges, not so much for their own advantage, but for the benefit of those whom they represent.

Thus in Whitehead v. Hamilton Rubber Co., 52 N. J. Eq. 78, it was said:

> "That all the directors are entitled to notice, either express or implied, of any meeting at which any business is transacted, in order that the business may be binding upon all the persons concerned, admits of no question. * * * If the meetings held are regular meetings, that is, such as are provided for by charter or the by-laws fixing time and place, then notice thereof is implied. Of all other meetings, especially those at which any business not pertaining to the ordinary affairs of the corporation is transacted, express notice must be given of the time and place and the object or purpose of the meeting."

A meeting of a majority of the directors at an unusual time and place is not valid where the minority had no notice.

First National Bank v. Asheville Co., 116 N. C. 827.

A special meeting of directors is void if no notice is given to absent directors. The fact that a director owns or controls a majority of the stock does not validate such a meeting even though he favor their action.

Hill v. Rich Hill Co., 119 Mo. 9.

To the same effect are

Smith v. Dorn, 96 Cal. 73.
Harding v. Vandewater, 40 Cal. 77.
Moore v. Hammond, 6 Barn. & Co. 456.
Doyle v. Mizner, 42 Mich. 332.

Notice to all of the trustees of a religious corporation is necessary.

Thompson v. West, 59 Neb. 677.

These rules have been applied to the governing bodies of municipal corporations.

Smyth v. Darlet, 2 H. L. 789.
Rex v. Carlisle, 1 Strange, 385.

Bonds issued under authority of a meeting of two commissioners of a town, without notice to a third commissioner, are not valid.

Pike County v. Rowland, 94 Pa. St. 238.

VIII.

The Assembly had no power to impeach at the extraordinary session, in the absence of action by the Governor enabling it to deal with that subject.

Under the Constitutions of 1821 and 1846 the Governor was empowered to convene the Legislature or the Senate only on extraordinary occasions. It was left absolutely to his discretion as to whether he would convene either the Senate or both houses in extraordinary session. It was never suggested that, if he declined to do so, the Senate could convene itself or both houses could convene themselves.

Unquestionably there can be no extraordinary session of the Senate or of the Legislature unless the Governor calls it into being. His discretionary power in that regard is absolute. It cannot be controlled either by the individual legislators, by statute, by resolution, or by rule; nor can it be compelled by judicial action. However great the necessity for such a session; however imperative the public necessity, his *non volo,* is conclusive. The power conferred on the Governor is political power in the exercise of which, as was said in Marbury v. Madison, 1 Cranch, 137, "he is accountable only to his country in his political character, and to his own conscience, and whatever opinion may be entertained of the manner in which the executive discretion may be used, still there exists no power to control that discretion."

In Re Governor's Proclamation, 35 Pac. 530, Elliot, J., speaking for the Supreme Court of Colorado, said:

> "The Governor is thus invested with extraordinary powers. He alone is to determine whether there is an extraor-

dinary occasion for convening the Legislature, and he alone is to designate the business which the Legislature is to transact when thus convened."

In Farrelly v. Cole, 56 Pac. 592 (s. c., 60 Kandad, 356, 54 L. R. A. 464), Smith, J., said:

"We will suppose again that the Constitution empowers the executive to convene the Legislature on extraordinary occasions, and does not in terms authorize the intervention of any one else in determining what is and what is not such an occasion in the Constitutional sense. It is obvious that the question is addressed exclusively to the executive department and neither the Legislature nor the judicial department can interfere to compel action, if the executive decides against it or to enjoin action, if, in his opinion, the proper occasion has arisen."

See also

Re Legislative Adjournments, 18 R. I. 824; s. c., 22 L. R. A. 76.

In Pillsbury's Petition, 217 Pa. 227 (1907); s. c., 66 Atl. Rep. 348; aff'd., 207 U. S. 161, the Governor had called Legislature together in extra session by proclamation, and then issued a second proclamation, which right was questioned. Brown, J., at page 230, said:

"Whether the General Assembly ought to be called together in extraordinary session is always a matter for the executive alone. How it shall be called, and what notice of the call is to be given, are also for him alone. The Constitution is silent as to these matters, and wisely so, for emergencies may arise, such as riots, insurrections, widespread epidemics or general calamities of any kind, requiring instant convening of the Legislature, and, in the power given to the Governor to call it, no time for notice is too short, if it can reach the members of the General Assembly."

This leaves to the discretion of the Governor the calling together of the Legislature. There is not even the suggestion that in any of the serious exigencies enumerated (which are of much

more import to the welfare of the people of the State than even the misconduct of a Governor) the Legislature can convene of its own volition for the purpose of dealing with them.

The power which was thus conferred on the Governor was intended to be the counterpart of that which was vested in the English Sovereigns with respect to the Convocation of Parliament. It was found in actual practice that when the Governor convened the Legislature in extraordinary session it was apt to prolong its deliberations, necessarily involving the State in large expense, and especially where the Governor and the Legislature represented different political parties, occasioning irritation and undue friction in the transaction of the public business.

It was for that reason that in the Constitutional Convention of 1867 it was deemed desirable that there should be a limitation placed upon the business which could be transacted at an extraordinary session, and various projects were presented and debated at some length bearing on this subject.

In Volume II of Lincoln's Constitutional History of New York, p. 330, the author summarized the debate on this proposition as follows:

> "The committee on legislative powers and duties reported a section relating to extraordinary sessions of the legislature, and which provided, in substance, that the governor should specify in his proclamation the subjects to be considered at such session, and the legislature was prohibited from considering any others. The original report of the committee on the governor and lieutenant governor did not contain this recommendation, but, in the progress of the consideration of the subject, the provision was included in a section in the executive article reported by the committee on revision. Mr. Church sought to amend the section so as to permit the legislature to transact business not included in the governor's proclamation. He thought the governor should not have the power to limit the business to be transacted by the legislature at an extraordinary session. The Convention declined to accept Mr. Church's amendment, but did adopt a suggestion by Judge Comstock, that laws enacted at a special session must relate to the subjects included in the proclama-

tion. Judge Comstock said this was intended to confine legislation to subjects specified in the proclamation, but to permit the legislature to exercise the power of appointment at a special session, either by electing officers, or acting on nominations by the Governor."

For the full text of this debate, we refer to Vol. V of the Proceedings of the Constitutional Convention of 1867, pp. 3614 to 3619.

The proposed amendment as thus formulated, and as submitted at the election held in 1869, reads as follows (II Lincoln, p. 439):

> "Art. IV, Sec. 6. Extraordinary sessions. The Governor may convene the senate on extraordinary occasions, and may call special sessions of the legislature by proclamation, in which shall be stated the particular object or objects for which they are called; and no law shall be enacted at any special session except such as shall relate to the objects stated in the proclamation."

The election of 1869 resulted in the rejection of all the work of the convention of 1867, except the judiciary article. It was recognized, however, that the Constitution required further amendment and thereupon, in compliance with the recommendations of Governor Hoffman contained in his annual message of 1872, in which he advocated constitutional reform, a commission of thirty-two eminent citizens was elected to consider and report to the Legislature recommendations of changes in the Constitution. Such a commission was appointed, six of the number having been members of the convention of 1867, and all of them being lawyers of high standing and great experience. Among them were George Opdyke, Augustus Schell, William Cassidy, David Rumsey, Erastus Brooks, Francis Kernan, John D. Van Buren, Benjamin D. Stillman, Samuel W. Jackson, Daniel Pratt, Lucius Robinson, George B. Bradley, Horace V. Howland and Sherman S. Rogers (II Lincoln, 9, 470).

The Commission, after protracted deliberation, presented a report to the Legislature proposing various amendments, which were finally submitted to the people at the election held in No-

vember, 1874, and were adopted to go into effect on January 1, 1875. Among other amendments thus ushered into existence was the amendment to article IV, section 4, which added to the then existing Constitution, the following clause:

> "At extraordinary sessions no subject shall be acted upon, except such as the Governor may recommend for consideration."

Mr. Lincoln shows (Vol. II, pp. 512, 513) that this clause was proposed by Mr. Van Buren. The comment which he makes upon it is:

> "In the preceding chapter I have given the history of a similar provision in the Convention of 1867, where, after much discussion, the limitation was confined to the enactment of laws relating to the objects stated in the proclamation, leaving the Legislature free to act on appointments and other incidental matters. The Commission, in its report to the Legislature, said concerning this clause that 'in limiting the action of the Legislature at extraordinary sessions, the Commissioners believed that on such occasions it was unwise to engage in general legislation, and, therefore, it is proposed to confine the Legislature to the subjects recommended by the Governor.'"

It is at once observed that the language adopted by the Commission of 1872 is more comprehensive and far reaching than the language proposed by Judge Comstock at the Convention of 1867. The latter merely restricted the Legislature when it convened in extraordinary session to the passage of such laws as were recommended by the Governor, but allowed the Legislature to have full scope with respect to all other matters.

With full knowledge of such purpose and of the debates which are held in the Convention of 1867, which were still ringing in their ears, the Commissioners deliberately adopted phraseology which excluded all action by the Legislature, whether legislative or otherwise, except such as the Governor might recommend for consideration. "No subject shall be acted upon, except such as the Governor may recommend for consideration."

It was not that no law should be enacted, except, etc. It was not that there should be no legislation, except, etc.; nor that no bill should be passed except, etc., nor that no subject should be acted upon by the Legislature; nor was any other similarly limited form of expression used. Its prohibition related to all action upon any subject, except, etc. No subject shall be acted upon, except, etc. No words could be more general and all embracing. Every possible subject on which a legislative body, or either of its componant parts may act is covered, and any possible action on any conceivable subject is prohibited unless the Constitutional condition precedent is complied with. The prohibition against action was directed not only against the Legislature but against its integral parts, the Assembly as well as the Senate. *Omne majus in se continet minus.*

Nor is it possible to coin a phrase which excludes ambiguity more completely than does that which was so chosen. We have already proven that the choice of this language was not accidental; it was intentional and deliberate for the very purpose of obviating what had been recognized as an existing evil.

The men who chose this language were familiar not only with the history of the State and its jurisprudence but they were men of culture, who understand the meaning of words and who also knew what it was to frame the organic law.

The word "subject" has long been defined and understood to mean that which is brought under thought or examination; that which is taken up for discussion. (People v. Parvin (Cal.), 14 Pac. 783, 784, quoting Webster's Dictionary.)

The Century Dictionary gives as one of the definitions of the word "subject" the following:

> "II. 4. That on which mental operation is performed; that which is thought, spoken or treated of."

As an illustration, the following lines from Pope's translation of the Iliad are given:

> "But this, no more the subject of debate,
> Is past, forgotten, and resign'd to fate."

When, therefore, the Constitution was thus amended, so as to limit the Legislature and the Senate to action at extraordinary

sessions on such subjects only as the Governor recommended, it meant, and could mean nothing else than, that the Legislature and both of its Houses were powerless to take any action, except such as the Governor expressly recommended. These words did not merely relate to legislation, but to the power of making appointments, or of electing such public officers whom under the law the Legislature was empowered to choose. They necessarily also included the power to impeach, because certainly that was a "subject"— one which would presumptively call for thought, examination and discussion. Hence, impeachment came not only within the very terms of this constitutional provision, but also within the reasons which actuated those who had framed it to make it a part of our organic law.

Ordinarily, whenever there has been an impeachment the preliminaries, as well as the debate, have occupied many days. It is not to be expected that in a deliberative assembly the presentation of a large volume of testimony and of articles of impeachment would be followed by a vote at the dead of night and within a few hours after the presentation of the subject for consideration. All of the impeachment proceedings which had occurred prior to 1872 occurred before the days of the long distance telephone, and rapid transit was a thing still undreamed of. In those days impeachment was considered a matter of such seriousness that weeks and months elapsed before resort was had to that drastic remedy. There was, therefore, a strong reason why the subject of impeachment should not be treated as *sui generis*.

As bearing on the interpretation to be given to this addition to the Constitution (if interpretation has any office to perform with respect to so lucid an ordinance) it is important to bear in mind that when the Commission of 1872 met this State had just passed through a unique experience with respect to the subject of impeachment. Six proceedings had but shortly before been completed which dealt with the removal from office of high officials; the trial of Judge Smith, of Herkimer county, of Mr. Dorn, Canal Commissioner, of Judge Barnard, of Judge McCunn and of Judge Curtis, in addition to the proceedings against Judge Cardozo, which were not tried. Never before in the history of any State of the Union had the public attention been so per-

sistently directed to the removal from office of important functionaries by the action of one or both houses of the Legislature than at this very time.

It would be presumptuous even to suggest that the important public men who composed the Commission of 1872 should have overlooked or forgotten that impeachment or removal from office were subjects with which the Legislature might be called upon to deal.

The fact, therefore, that they chose to limit the power of the Legislature and of the Senate at an extraordinary session in the manner that they did; employing the phraseology which they adopted, makes it evident that they acted with full appreciation that, unless the Governor recommended action on the subject of removal from office or of impeachment in a communication to the Legislature, those subjects were to be excluded from legislative consideration to the same extent as any other business would be excluded, the subject of which he did not specifically bring to the attention of the Legislature or of the Senate.

Under the Constitution as it had stood previously, the Governor had the power to convene the Legislature or the Senate only on extraordinary occasions. There was a reason for permitting this to be done with regard to the Senate only which did not apply to the Assembly. Many appointments to office can only be made by the Governor by and with the advice and consent of the Senate, and it was therefore desirable that to enable the public business to be carried on without let or hindrance the Senate should be called together for the purpose of acting on such appointments. The very fact, however, that it was expressly permitted that the Senate might be convened alone, in extraordinary session, and that there was no provision which permitted the Governor to call the Assembly alone to convene on an extraordinary occasion, presents a formidable reason for the argument that it was not intended that the Assembly should at any time be convened alone, and that if convened as a part of the Legislature at an extraordinary session it could only act on such subjects as were recommended to it by the Governor. Hence, without his recommendation, the subject of impeachment could not be taken under consideration by it.

We will not now discuss the question as to whether or not it would be likely that the Governor should recommend the consideration of his own impeachment. That phase of the case will be taken up at a future stage of the discussion.

We wish to emphasize that the Governor, is only one of the many public officers who can be proceeded against by impeachment. There are one hundred Supreme Court Justices, ten Judges sitting in the Court of Appeals, upwards of sixty County Judges, almost as many Surrogates, and numerous executive State officers. We must therefore, consider the language of the Constitution in its application to all of these numerous public officials.

It is believed that New York was the first of the States which undertook to limit the power of the Legislature at an extraordinary session. In Appendix A, we have furnished a transcript of the Constitution of the several States which refer to special sessions of their Legislature, and which it is believed will throw a flood of light upon the meaning of the language contained in our Constitution and will sustain the correctness of the interpretation which we are now seeking to give it.

The effect of provisions in the Constitutions of other States of cognate character, on the interpretation of similar provisions in our Constitution, is admirably discussed by Mr. Justice Bockes in People ex rel. Bush v. Thorton, 25 Hun, 466, 467, as follows:

> "In England bribery in procuring an office created a disability to hold it. (5 and 6 Edw. 6 Chap. 16; and 46 Geo. III. Chap. 126.) In Iowa it is provided by law that an election to a county office may be contested 'when the incumbent has given or offered to any elector * * * any bribe or reward in money, property or thing of value for the purpose of procuring his election.' Carrothers v. Russell (*supra*) was decided in view of that statutory provision. In Kansas it is declared by constitution that no person guilty of giving or receiving a bribe, * * * shall be qualified to vote or to hold office. The case of the State v. Stevens, (23 Kans. 456) was a proceeding for mandamus and has no application to the question of disability here under

examination. In Oregon it is declared by Constitution that every person shall be disqualified from holding office during the term for which he may have been elected, who shall have given or offered a bribe, threat or reward to procure his election. It was in view of this provision that the State v. Dustin, (*supra*) was decided. In Wisconsin the statute declares a disqualification to hold office against such persons as should obtain it by bribery; and in Ohio disqualification is declared by law. Research has not been further extended, and it may be that similar constitutional or legislative inhibitions may exist in some other states of the Union. We have not in this state any similar provision, either in the Constitution or laws. It may be here pertinently asked, what need of expressly declaring this inhibition in those states if it existed there, as it claimed to exist here, without so declaring it? The disability was doubtless made constitutional in some states and was declared by law in others, under the belief, well founded, too, as we think, that it was necessary to make such express declaration and provision in order to create the disability thus pronounced. We are cited to no case in which it has been held that disability to hold office exists in the absence of a constitutional or legislative provision so declaring."

These constitutional provisions, as by reflected light, enable us to understand and appreciate the all-inclusive character of the cognate clause in our Constitution. In some of them it is provided that there shall be no legislation upon subjects other than those designated in the proclamation of the Governor. In others, that no other business than that specified in the Governor's proclamation shall be transacted.

In still others "no other business shall be transacted than that named in the proclamation;" "or the Legislature, when convened, shall have no power to "legislate on any subjects" other than those specified; or the Governor shall have power to convene the Legislature for "the transaction of executive business"; or the Legislature shall "transact no legislative business" other than that for which it is specially convened. Again it is provided, that no laws shall be enacted at called sessions "except such as

shall relate to the object stated, or the objects specially enumerated."

The Constitution of Mississippi provides, that the Legislature, when so convened, shall have no power to consider or act upon subjects or matters other than those designated in the proclamation of the Governor or by which the session is called, except impeachments and examination into the accounts of State officers.

There is of course a manifest distinction between a prohibition against legislation and one against acting on any subject whatsoever, other than that recommended by the Governor, and the significant fact that the framers of the Constitution of Mississippi, which was undoubtedly modeled upon the Constitution of New York, found it necessary to except impeachments from the effect of the language which was borrowed from our Constitution, in order to enable the Legislature, without regard to the action of the Governor, to deal with that subject, absolutely demonstrates that, but for such exception, the institution of an impeachment at an extraordinary session without the Governor's recommendation, would have been prohibited.

The President.— You may suspend now. We will hear you further on Monday. Before the court adjourns, I desire to announce the appointment of a committee required by Rule IX to maintain order and enforce the proper performance of their duties by all officers and attendants of the Court. The Committee will consist of Senator Murtaugh, Senator Walters and Judge Hogan.

Mr. Parker.— Presiding Judge, we would like a direction on the part of the Court for witnesses who have been subpoenaed to appear on Monday. Before the court adjourns we would like a direction for the witnesses who have been subpoenaed here on the part of the Managers, that they appear here on Monday at the opening of the Court.

The President.— The Clerk will announce that all witnesses summoned by either side to attend at this meeting of the Court, must be in attendance at the time to which the Court adjourns, next Monday, at 2 o'clock.

The Clerk.— All witnesses summoned to appear by either side shall be here at the time of the meeting of the Court on Monday next.

The President.— At 2 o'clock.

The Clerk.— At 2 o'clock.

The President.— Adjourn Court, Crier.

The Crier.— Hear ye, hear ye, hear ye, all persons having any further business before this High Court of Impeachment held in and for the State of New York may depart hence, and appear here next Monday afternoon, at 2 o'clock, to which time this Court now stands adjourned.

Thereupon, at 3.35 o'clock P. M., the Court adjourned to meet again on Monday, September 22, 1913, at 2 o'clock P. M.

(The challenges entered to-day by counsel for the respondent against Senators Sanner, Ramsperger, Frawley and Wagner are printed immediately following.)

CHALLENGE TO SENATOR JAMES J. FRAWLEY

STATE OF NEW YORK.

IN THE

COURT FOR THE TRIAL OF IMPEACHMENTS.

THE PEOPLE OF THE STATE OF NEW YORK, BY THE ASSEMBLY THEREOF,

against

WILLIAM SULZER, As Governor.

Counsel for the respondent respectfully protest against Senator James J. Frawley, one of the Senators of the State, being sworn as a member of this Court, and respectfully challenge him for the principal cause that he is not indifferent as between the people of the State and this respondent.

And as the grounds for this challenge, counsel for the respondent respectfully submit the following:

That heretofore on May 3, 1913, the Legislature of the State of New York during its regular session by concurrent resolution of that date, did authorize the appointment of a joint Legislative Investigating Committee for the following purpose and none other, to wit:

> "To examine into the methods of financial administration and conduct of all institutions, societies or associations of the State, which are supported either wholly or in part by State moneys, or which report officially to the State; into the functions of any or all State departments concerned in the management, supervision or regulation of any of such departments, the methods of making purchases, fixing salaries, awarding contracts for supplies, buildings, repairs and improvements, the sale of manufactured articles, and the conduct generally of the business of all such institutions and departments, for the purpose of reporting to the next session of the Legislature such laws relating thereto, as the Committee may deem proper."

That thereupon the President of the Senate and the Speaker of the Assembly appointed the said Senator James J. Frawley, Senator Felix J. Sanner, Senator Samuel J. Ramsperger and Senator Elon R. Brown, as the Senate members of such joint committee; that thereafter and at an extraordinary session of the Legislature on June 25, 1913, by a concurrent resolution of the Senate and Assembly, claimed to have been passed and adopted by a majority of the members duly elected to each branch of the Legislature, it was attempted to confer further and additional power upon said legislative committee, and to investigate amongst other things:

> "For the information of the Legislature, the whole subject of any unlawful or improper methods or wrongful or unlawful acts aforesaid and of receipts and expenditures of candidates for an elective office to be filled by the votes of the electors of the whole state be referred to a certain joint legislative committee of the Senate and Assembly to examine into the methods of financial administration and con-

duct of all institutions, societies or associations of the State, etc., heretofore appointed under joint resolutions, dated the second day of May, 1913, to ascertain and report to the legislature at this extraordinary session, or, if not ready, as soon thereafter as possible, whether any unlawful or improper methods have been employed, used or pursued or wrongful or unlawful acts done by any private person or public officer to influence the votes of legislators on election or primary legislation at the last regular or the present extraordinary session of the legislature; and further to investigate into, ascertain and report upon all expenditures made by any candidates voted for at the last preceding election by the electors of the whole State and upon all statements filed by or on behalf of any such candidate for moneys or things of value received or paid out in aid of his election and their compliance with the present requirements of law relating thereto.

"Said committee to have the power to subpoena witnesses on these subjects the same as provided in the resolution of May second, above referred to."

That the said James J. Frawley, Felix J. Sanner, and Samuel J. Ramsperger took an active part in the investigation and examination authorized or claimed to have been authorized by said resolutions, and thereafter and on the 11th day of August, 1913, said joint committee submitted a report to the Legislature wherein the said named Senators in substance adjudged the respondent guilty of the charges contained in the articles of impeachment now exhibited against him, as will more fully appear from a copy of said report hereto annexed and made a part of this challenge, marked Exhibit A.

That upon the submission of such report to the Assembly the said articles of impeachment now preferred and exhibited against this respondent were formulated following the findings and conclusions of said committee and grounded thereupon.

And after the finding and filing of such articles of impeachment the said Investigating Committee continued their examination and investigation into the conduct and actions of this re-

spondent, in all of which the said Senator James J. Frawley took part.

Wherefore, Counsel for the respondent submit that the said Senator James J. Frawley does not stand indifferent as between the people of the State of New York and this respondent, but has taken an active part in investigating charges against him, and in formulating the report thereon, and has in advance passed upon the question of the guilt or innocence of the respondent upon the charges and accusations set forth in said articles of impeachment; and counsel for the respondent respectfully ask this court to determine this challenge in such manner as shall secure to this respondent a tribunal, all of whose members shall be impartial and free from any prejudice or bias against the said respondent.

D-Cady Herrick,
Irving G. Vann,
Austen G. Fox,
Louis Marshall,
Harvey D. Hinman,
Of Counsel for Respondent.

Exhibit A.

STATE OF NEW YORK.

REPORT OF THE JOINT LEGISLATIVE INVESTIGATING COMMITTEE.

Submitted, August 11, 1913.

To the Senate and Assembly of the State of New York in Extraordinary Session Assembled:

The joint Legislative Investigating Committee heretofore appointed with power, among other things, to investigate into, ascertain and report at this extraordinary session upon all expenditures made by any candidate voted for at the last preceding election by the electors of the whole State, and upon all statements made by and on behalf of any such candidate for moneys or things of value received or paid out in aid of his election and their compliance with the present requirements of law relative thereto, does hereby report as follows:

That this Committee has held public hearings, taken sworn testimony and investigated generally the specific matters above referred to; and this Committee is of the opinion that said hearings and the evidence given thereat have disclosed such unlawful conduct by one candidate at the last general election as to warrant and require an immediate and separate report in respect thereto, in order that the Legislature may take such action thereon at this extraordinary session as the public interest and welfare demand.

William Sulzer, a candidate for Governor at the last preceding election and now Governor of this State, in accordance with the requirements of the so-called Corrupt Practices Article of the Election Law and the statutes in relation to campaign contributions and expenses, filed on November 13, 1912, a statement under oath setting forth in effect that all the money received by him in aid of his election, directly or indirectly, as candidate of the Democratic party for the office of Governor of the State of New York in connection with the general election held in the State of New York on the 5th day of November, 1912, was the sum of $5,460 and no more. The following is the oath made and filed with the Secretary of State by William Sulzer:

STATE OF NEW YORK,
CITY AND COUNTY OF NEW YORK, } *ss.:*

Wm. Sulzer, being duly sworn, says that he is the person who signed the foregoing statement; that said statement is in all respects true and that the same is a full and detailed statement of all moneys received, contributed or expended by him directly or indirectly by himself or through any other person in aid of his election.

WM. SULZER.

Sworn to before me this 13th
day of November, 1912.

ALFRED J. WOLFF,
Commissioner of Deeds, No. 72, New York City.

A preliminary investigation of certain of the 68 contributions aggregating said amount of $5,460 and set forth in said statement, disclosed that the checks for some of these conceded contributions were first endorsed in the name of William Sulzer and thereafter were endorsed by one L. A. Sarecky for deposit in the

Mutual Alliance Trust Company at 35 Wall street, New York city. There was also produced before the Committee at its first hearing on this subject a check for $2,500 for Jacob H. Schiff's campaign contribution to William Sulzer, signed Kuhn, Loeb & Company, to the order of said Sarecky, likewise deposited by said Sarecky in said account in the Mutual Alliance Trust Company.

With these facts and this evidence before it, this Committee, on July 30, 1913, called the said Sarecky to the witness stand, who, after being duly sworn, admitted that for years he had acted as confidential secretary to William Sulzer, but refused to answer any questions relative to the campaign statement of William Sulzer, or to any campaign contributions, or to deposits in the Mutual Alliance Trust Company; and it is and was the opinion of your Committee from the answers of said witness and his demeanor on the stand that his refusal to testify was at the instance and direction of Governor Sulzer.

It further appeared at the said first hearing on this subject that a campaign contribution of $500 in aid of the campaign of William Sulzer from Abram I. Elkus, represented by his check to the order of William Sulzer, had been received and personally endorsed by the said Sulzer and deposited to his personal account in the Farmers' Loan & Trust Company, in which company the said Sarecky admitted that William Sulzer had for a long time had an account. At a subsequent hearing it appeared that the deposit slip accompanying said check when deposited in the Farmers' Loan & Trust Company was also in the handwriting of William Sulzer. Neither the Schiff contribution nor the Elkus contribution was included in the sworn statement of William Sulzer dated and verified November 13, 1912.

Upon these facts the Committee proceeded to have a further hearing in the city of New York at which time there was produced a true transcript of the account of said Sarecky in the Mutual Alliance Trust Company, and a true transcript of the account of said Sulzer in the Farmers Loan & Trust Company according to the original books of account of the said trust companies.

By the transcript of the Mutual Alliance Trust Company it was proven that the total amounts deposited during the period of the campaign in the account of L. A. Sarecky and evidently for campaign purposes, instead of being $5,460 was $12,405.93; and William Sulzer not only knew that Sarecky's account contained his campaign contributions, or some of them, but he authorized

their deposit therein as is shown by a letter signed by said Sulzer, dated October 22, 1912, and addressed to the Mutual Alliance Trust Company as follows:

"Mutual Alliance Trust Company.

October 22, 1912.

Gentlemen.— This is to inform you that I have authorized my private secretary, Mr. L. A. Sarecky, to indorse my name to any checks donated to my campaign fund and to deposit same to his credit.

Very truly yours,

WILLIAM SULZER.

The original deposit slips with the Mutual Alliance Trust Company for said period were also produced before your Committee and instead of showing that contributions had been received from 68 persons aggregating in amount $5,640, the fact was that there had been deposited 94 checks from various contributors, together with a sum in cash or currency of between $1,500 and $2,000.

At this same hearing there was also produced before your Committee a personal check for campaign contribution by William F. McCombs, then Chairman of the Democratic National Committee, for $500 to the order of William Sulzer, thereafter deposited by Sarecky in the Mutual Alliance Trust Company and not reported by William Sulzer in his statement sworn to November 13, 1912.

There was further produced at said hearing in New York city a check by Henry Morganthau, then Chairman of the Finance Committee of the Democratic National Committee, for $1,000 to the order of William Sulzer, which check was endorsed personally by William Sulzer and although a campaign contribution, was deposited by him, accompanied by a deposit slip in his own handwriting, in his personal account in the Farmers Loan and Trust Company.

Thereafter there was produced a full transcript of the Farmers Loan and Trust Company's account of William Sulzer from September 1, 1912, to January 1, 1913, with the original deposit slips, from which it appeared that the amount of deposits between said dates to the account of William Sulzer was $24,395.31; that on October 8th and 10th, when William Sulzer was in New York city, he deposited in checks and currency in said account the sum of $7,900, of which amount the said Morganthau $1,000 check was a part; that on October 12, 1912, during the campaign, Wil-

liam Sulzer further deposited currency amounting to $2,500 and a check for $1,000; and further on December 16, 18, and 28, 1912, he deposited $5,100 in currency — All in said Farmers Loan and Trust Company.

Your Committee further reports that having received authentic information that William Sulzer had used campaign funds for the purpose of buying securities or speculating on margins in Wall street, some of them being carried on in the name of Frederick L. Colwell, a personal friend, as a dummy for Sulzer, it attempted to have produced the books of account of two brokerage firms in New York city, namely: Messrs. Harris & Fuller and Fuller & Gray; and also subpoenaed the said Frederick L. Colwell to testify.

That thereupon at first the firm of Harris & Fuller, or the members thereof, refused to produce their accounts with William Sulzer, and Melville B. Fuller, of said firm, refused to answer any questions as to said account, and in like manner Frederick L. Colwell refused to answer questions as to any account of stock transactions relative to or connected with William Sulzer. It further appeared from the answers of said witnesses, their demeanor on the witness stand and from authentic information in the possession of the Committee, that they so refused to answer questions at the instance and request of Governor Sulzer and that Fuller had had an interview with Governor Sulzer in Albany after being served with the subpoena, at which interview it was demanded by Governor Sulzer and agreed that said Fuller should refuse to give any information respecting said account.

That thereafter the said Fuller was threatened with punishment for contempt by the Legislature, and finally appeared at a subsequent hearing, and produced a transcript of the account of William Sulzer, which account, for the purposes of keeping its existence secret from other customers of the firm was known, numbered and designated as account 63. This account shows that William Sulzer was carrying on margin in the said office of said brokers:

500 shares of C. C. C. & St. L. (Big Four) stock,
200 shares of American Smelters and
100 shares of Southern Pacific.

And that on January 1, 1912, while the said Sulzer was Chairman of the Foreign Affairs Committee in the House of Representa-

tives, and a Member of said House he owed the firm of Harris & Fuller $48,599.38 on said speculative account. It further appears that after his election as Governor the said Sulzer paid by deposits of cash or checks on his debt to said Harris & Fuller the sum of $21,000, and we call attention to the fact that within two weeks after his election, on November 18, 1912, he paid them in currency $10,000, and on December 16, 1912, he paid them in currency $6,000, although none of these sums were drawn from the Farmers Loan & Trust Company. That in the month of June, 1913, Governor Sulzer was being continually requested by Harris & Fuller to make payment on account of his margins, which had become very weak and he was notified either to pay or take up the account and transfer it to some one else, with the result that on July 15, 1913, Lieutenant-Commander Louis M. Josephthal paid for the said Sulzer the amount then remaining due of $26,739.21. That said Josephthal is a member of Governor Sulzer's military staff, being the only member of Governor Dix's staff who was retained by Sulzer.

There was further produced before your Committee under subpoena a certain account of Frederick L. Colwell, the friend and dummy of William Sulzer above referred to, with the firm of Boyer, Griswold & Company, brokers of New York City, wherefrom it appeared that on the 16th day of October, 1912, during the campaign, the said Colwell bought outright 200 shares of C. C. C. & St. L. stock, commonly known as Big Four, for the sum of $12,025, and that said Colwell paid for said stock on that day with the following funds:

Check of William Sulzer	$900 00
Check of Theodore W. Meyers	1,000 00
Check of John Lynn	500 00
Check of Lyman A. Spalding	100 00
Check of Edward F. O'Dwyer	100 00
Check of John W. Cox	300 00
Check of The Frank V. Strauss Company	1,000 00
Check of John T. Dooling	1,000 00
Currency	7,125 00
	$12,025 00

The evidence further showed that the check of William Sulzer for $900 was drawn on the Farmers' Loan & Trust Company account above referred to, and no one can doubt but that all of these checks were for campaign contributions, especially as Spalding testified that his check was given for that specific purpose, and that it went in with other checks contributed for campaign purposes by members of the Manhattan Club.

The Committee had produced before it another account for the purchase of 200 shares of Big Four stock from the firm of Fuller & Gray, paid for by $11,825.00 in currency between the 21st and 31st days of October, 1912, during the campaign, this account being known as number 500, for the purpose of concealing the fact that the account belonged to William Sulzer; and this stock was delivered by devious ways to the dummy, Colwell, who met the messenger by appointment at the Nassau National Bank, in New York City.

This same Colwell, when again subpoenaed for another hearing, after having refused to testify as above stated, failed to appear when his name was called, and is now in contempt of the Legislature as is also the former confidential secretary of William Sulzer, Louis A. Sarecky.

The foregoing is a summary of the salient facts and evidence in relation to campaign contributions and the conversion thereof; and one of the most significant features of this evidence, aside from and in addition to the large checks received for campaign purposes and not accounted for in the sworn statement, is the large amount of currency which William Sulzer had and used, in the purchase or protection of stocks during the three months between the day that he was nominated and the day he took office as Governor, namely:

October 16, 1912, for the purchase of Big Four stock	$7,125 in currency.
October 21 to 31, 1912, for the purchase of Big Four stock.....	11,825 in currency.
October 8, 1912, deposited in the Farmers Loan & Trust Co.....	1,400 in currency.
October 12, 1912, deposited in the Farmers Loan & Trust Co.....	2,500 in currency.

December 16, 1912, deposited in the Farmers Loan & Trust Co.....	$1,100 in currency.
December 18, 1912, deposited in the Farmers Loan & Trust Co.....	1,000 in currency.
December 28, 1912, deposited in the Farmers Loan & Trust Co.....	3,000 in currency.
November 18, 1912, deposited with Harris & Fuller.....	10,000 in currency.
December 16, 1912, deposited with Harris & Fuller.....	6,000 in currency.
Total currency between nomination and inauguration	$43,950 in currency.

Your Committee leaves to the Legislature the inference to be drawn from the possession and use of this currency.

During the time of these hearings and investigations William Sulzer, as Governor, has done everything in his power to withhold the truth and obstruct the production of evidence and the course of justice. At his instance and direction both Sarecky, his secretary, Colwell, his dummy, and Harris & Fuller, his brokers, have refused to testify before the Committee. His influence in the promotion of Sarecky to an important and lucrative position in the State Hospital Commission as Deportation Agent — substituting an inexperienced young stenographer for an experienced physician in that position — could only be a reward for Sarecky's silence in protecting the Governor from damaging disclosures.

Governor Sulzer made a false public statement, when on July 30, 1913, he said that he was away campaigning and that he did not know of the campaign contributions omitted from his sworn statement. The Elkus check was endorsed by Sulzer personally and he acknowledged the letter of Elkus transmitting it as a campaign contribution.

We submit to the Legislature that it was false when William Sulzer swore that he had received only $5,460 of campaign contributions and that he did so with full knowledge that he had re-

ceived an amount many times that sum and had converted the same to his private uses; that he used contributions given to aid in his election for the purchase of stocks in Wall Street which he or his agents still hold; that he has been engaged in stock market speculations at the time that he, as Governor, was earnestly pressing legislation against the New York Stock Exchange which would affect the business and prices of the Exchange; and that there was evidence before this Committee to sustain a finding that as Governor he has punished legislators who opposed him by vetoing legislation enacted for the public welfare, and has traded executive approval of bills for support of his direct primary and other measures.

We submit to the Senate and Assembly that the facts above stated are sufficiently serious in character and are so violative of the laws of this State and the rules of fitness for and conduct in high office, that the public interests demand some action in reference thereto whether through the exercise of powers of the Legislature, or by referring the facts and evidence to other duly constituted officers charged with duties in respect thereof.

There is in the possession of this Committee further authentic information of other similar evidence in respect to the subject of this report, as strong in quality and in the large amounts involved as that on which sworn testimony has already been given.

This Committee, therefore, has not completed its investigation either on this subject or others covered by the resolutions under which it is acting, but it has felt that the revelations set forth in this report and the testimony accompanying it should be brought to the attention of the Legislature at once without awaiting a final report either on this or other subjects.

The questions here involved are vital to clean government. They are above party or partisanship. They are vital to the citizens of the state and call for prompt and well-considered action. They call for an answer from Governor Sulzer, because both his obstructive tactics and his silence warrant the conclusion that the charges can neither be answered nor explained.

We recommend the punishment for contempt of Louis A. Sarecky and Frederick L. Colwell hereinbefore referred to: and

we transmit herewith the record of the hearings with the testimony and exhibits.

Albany, N. Y., August 11, 1913.

Respectfully submitted by order of the committee,

THE JOINT LEGISLATIVE INVESTIGATING COMMITTEE,

JAMES J. FRAWLEY,
Chairman.

EUGENE LAMB RICHARDS,
Counsel.

MATTHEW T. HORGAN,
Secretary.

CHALLENGE TO SENATOR FELIX J. SANNER.

STATE OF NEW YORK.

IN THE

COURT FOR THE TRIAL OF IMPEACHMENTS.

THE PEOPLE OF THE STATE OF NEW YORK, BY THE ASSEMBLY THEREOF,
against
WILLIAM SULZER, As Governor.

Counsel for the respondent respectfully protest against Senator Felix J. Sanner, one of the Senators of the State, being sworn as a member of this Court, and respectfully challenge him for the principal cause that he is not indifferent as between the people of the State and this respondent.

And as the grounds for this challenge, counsel for the respondent respectfully submit the following:

That heretofore, on May 3, 1913, the Legislature of the State of New York during its regular session by concurrent resolution of that date, did authorize the appointment of a joint legislative

investigating committee for the following purpose and none other, to wit:

> "To examine into the methods of financial administration and conduct of all institutions, societies or associations of the State, which are supported either wholly or in part by State moneys, or which report officially to the State; into the functions of any or all State departments concerned in the management, supervision or regulation of any of such departments, the methods of making purchases, fixing salaries, awarding contracts for supplies, buildings, repairs and improvements, the sale of manufactured articles, and the conduct generally of the business of all such institutions and departments, for the purpose of reporting to the next session of the Legislature such laws relating thereto as the committee may deem proper."

That thereupon the President of the Senate and the Speaker of the Assembly appointed the said Senator James J. Frawley, Senator Felix J. Sanner, Senator Samuel J. Ramsperger, and Senator Elon R. Brown as the Senate members of such joint committee; that thereafter and at an extraordinary session of the Legislature on June 25, 1913, by a concurrent resolution of the Senate and Assembly, claimed to have been passed and adopted by a majority of the members duly elected to each branch of the Legislature, it was attempted to confer further and additional power upon said Legislative Committee, and to investigate amongst other things:

> "For the information of the Legislature, the whole subject of any unlawful or improper methods or wrongful or unlawful acts aforesaid, and of receipts and expenditures of candidates for an elective office to be filled by the votes of the electors of the whole State be referred to a certain joint Legislative Committee of the Senate and Assembly to examine into the methods of financial administration and conduct of all institutions, societies or associations of the State,

etc., heretofore appointed under joint resolutions, dated the second day of May, 1913, to ascertain and report to the Legislature at this extraordinary session, or, if not ready, as soon thereafter as possible, whether any unlawful or improper methods have been employed, used or pursued, or wrongful or unlawful acts done by any private person or public officer to influence the votes of legislators on election or primary legislation at the last regular or the present extraordinary session of the Legislature; and further to investigate into, ascertain and report upon all expenditures made by any candidate voted for at the last preceding election by the electors of the whole State, and upon all statements filed by or on behalf of any such candidate for moneys or things of value received or paid out in aid of his election and their compliance with the present requirements of law relating thereto.

"Said Committee to have the power to subpœna witnesses on these subjects the same as provided in the resolution of May second above referred to."

That the said James J. Frawley, Felix J. Sanner and Samuel J. Ramsperger took an active part in the investigation and examination authorized or claimed to have been authorized by said resolutions, and thereafter and on the 11th day of August, 1913, said joint Committee submitted a report to the Legislature wherein the said named Senators in substance adjudged the respondent guilty of the charges contained in the articles of impeachment now exhibited against him, as will more fully appear from a copy of said report hereto annexed and made a part of this challenge, marked *Exhibit A.*

That upon the submission of such report to the Assembly the said articles of impeachment now preferred and exhibited against this respondent were formulated following the findings and conclusions of said Committee and grounded thereupon.

And after the finding and filing of such articles of impeach-

ment the said investigating Committee continued their examination and investigation into the conduct and actions of this respondent, in all of which the said Senator Felix J. Sanner took part.

WHEREFORE, counsel for the respondent submit that the said Senator James J. Frawley does not stand indifferent as between the people of the State of New York and this respondent, but has taken an active part in investigating charges against him, and in formulating the report thereon, and has in advance passed upon the question of the guilt or innocence of the respondent upon the charges and accusations set forth in said articles of impeachment; and counsel for the respondent respectfully ask this court to determine this challenge in such manner as shall secure to this respondent a tribunal, all of whose members shall be impartial and free from any prejudice or bias against the said respondent.

D-CADY HERRICK,
IRVING G. VANN,
AUSTEN G. FOX,
LOUIS MARSHALL,
HARVEY D. HINMAN,
Of Counsel for Respondent.

(Here follows Exhibit A, which is the "Report of the Joint Legislative Investigating Committee," submitted August 11, 1913, to the Senate and Assembly of the State of New York in extraordinary session assembled, and is identical with "Exhibit A" annexed to and made part of the challenge to Senator James J. Frawley, *supra.*)

CHALLENGE TO SENATOR SAMUEL J. RAMSPERGER.

STATE OF NEW YORK,

IN THE

COURT FOR THE TRIAL OF IMPEACHMENTS.

THE PEOPLE OF THE STATE OF NEW YORK, BY THE ASSEMBLY THEREOF,
against
WILLIAM SULZER, As Governor.

Counsel for the respondent respectfully protest against Senator Samuel J. Ramsperger, one of the senators of the state, being sworn as a member of this court, and respectfully challenge him for the principal cause that he is not indifferent as between the people of the state and this respondent.

And as the grounds for this challenge, counsel for the respondent respectfully submit the following:

That heretofore on May 3rd, 1913, the legislature of the State of New York during its regular session by concurrent resolution of that date, did authorize the appointment of a joint legislative investigating committee for the following purpose and none other, to wit:

> "To examine into the methods of financial administration and conduct of all institutions, societies or associations of the state, which are supported either wholly or in part by state moneys, or which report officially to the state; into the functions of any or all state departments concerned in the management, supervision or regulation of any of such departments, the methods of making purchases, fixing salaries, awarding contracts for supplies, buildings, repairs and improvements, the sale of manufactured articles and the conduct generally of the business of all such institutions and

departments, for the purpose of reporting to the next session of the legislature such laws relating thereto as the committee may deem proper."

That thereupon the President of the Senate and the Speaker of the Assembly appointed the said Senator James J. Frawley, Senator Felix J. Sanner, Senator Samuel J. Ramsperger and Senator Elon R. Brown, as the senate members of such joint committee; that thereafter and at an extraordinary session of the legislature on June 25, 1913, by a concurrent resolution of the senate and assembly, claimed to have been passed and adopted by a majority of the members duly elected to each branch of the legislature, it was attempted to confer further and additional power upon said legislative committee, and to investigate amongst other things:

"For the information of the legislature, the whole subject of any unlawful or improper methods or wrongful or unlawful acts aforesaid and of receipts and expenditures of candidates for an elective office to be filled by the votes of the electors of the whole state be referred to a certain joint legislative committee of the senate and assembly to examine into the methods of financial administration and conduct of all institutions, societies or associations of the state, etc., heretofore appointed under joint resolutions, dated the second day of May, 1913, to ascertain and report to the legislature at this extraordinary session, or, if not ready, as soon thereafter as possible, whether any unlawful or improper methods have been employed, used or pursued, or wrongful or unlawful acts done by any private person or public officer to influence the votes of legislators on election or primary legislation at the last regular or the present extraordinary session of the legislature; and further to investigate into, ascertain and report upon all expenditures made by any candidate voted for at the last preceding election by the electors of the whole state and upon all state-

ments filed by or on behalf of any such candidate for moneys or things of value received or paid out in aid of his election and their compliance with the present requirements of law relating thereto.

"Said committee to have the power to subpoena witnesses on these subjects the same as provided in the resolution of May second, above referred to."

That the said James J. Frawley, Felix J. Sanner, and Samuel J. Ramsperger took an active part in the investigation and examination authorized or claimed to have been authorized by said resolutions, and thereafter and on the 11th day of August, 1913, said joint committee submitted a report to the Legislature wherein the said named senators in substance adjudged the respondent guilty of the charges contained in the articles of impeachment now exhibited against him, as will more fully appear from a copy of said report hereto annexed and made a part of this challenge, marked *Exhibit A.*

That upon the submission of such report to the Assembly the said articles of impeachment now preferred and exhibited against this respondent were formulated following the findings and conclusions of said committee and grounded thereupon.

And after the finding and filing of such articles of impeachment, the said investigating committee continued their examination and investigation into the conduct and actions of this respondent, in all of which the said Senator Samuel J. Ramsperger took part.

Wherefore, Counsel for the respondent submit that the said Senator James J. Frawley does not stand indifferent as between the people of the State of New York and this respondent, but has taken an active part in investigating charges against him, and in formulating the report thereon, and has in advance passed upon the question of the guilt or innocence of the respondent upon the charges and accusations set forth in said articles of impeachment; and counsel for the respondent respectfully ask this court to determine this challenge in such manner as shall secure to

this respondent a tribunal, all of whose members shall be impartial and free from any prejudice or bias against the said respondent.

D-Cady Herrick,
Irving G. Vann,
Austen G. Fox,
Louis Marshall,
Harvey D. Hinman,
Of Counsel for Respondent.

(Here follows "Exhibit A," which is the "Report of the Joint Legislative Investigating Committee," submitted August 11, 1913, to the Senate and Assembly of the State of New York in extraordinary session assembled, and is identical with "Exhibit A annexed to and made part of the challenge to Senator James J. Frawley, supra.)

CHALLENGE TO SENATOR ROBERT F. WAGNER.

STATE OF NEW YORK,

IN THE

COURT FOR THE TRIAL OF IMPEACHMENTS.

The People of the State of New York, by the Assembly thereof,
against
William Sulzer, As Governor.

Counsel for the Respondent respectfully protest against the Honorable Robert F. Wagner, one of the Senators of the State, being sworn as a member of this Court, and respectfully challenge him for principal cause that he is not indifferent as between the People of the State and this Respondent, and is interested in the final result of this impeachment.

And as ground for this challenge, counsel for the Respondent respectfully submit the following: That the said Robert F. Wagner was heretofore elected and now is temporary president of the Senate and in the event of the conviction of this Respondent will succeed to the office, honors, dignities and emoluments of the Lieutenant-Governor of the State.

WHEREFORE, Counsel for the Respondent submit that the said Senator Robert F. Wagner does not stand indifferent as between the People of the State of New York and this Respondent, but is a party interested in the result of this impeachment, and counsel for the Respondent respectfully ask this Court to determine this challenge in such manner as will secure for this Respondent a tribunal, all of whose members shall be impartial and free from any interest adverse to this Respondent in the trial now to be had.

D-CADY HERRICK,
IRVING G. VANN,
AUSTEN G. FOX,
LOUIS MARSHALL,
HARVEY D. HINMAN,
Of Counsel for Respondent.

SENATE CHAMBER,

ALBANY, N. Y., *September* 22, 1913.

Pursuant to adjournment the Court convened at 2 p. m.

PRESENT:

Hon. EDGAR M. CULLEN, Presiding Judge,
and
THE JUDGES OF THE COURT OF APPEALS,
and
THE SENATORS OF THE STATE OF NEW YORK.

APPEARANCES:

THE MANAGERS:

Same as heretofore.

Counsel for the Managers:

Same as heretofore.

Counsel for the Respondent:

Same as heretofore.

The President.—Call the roll, Mr. Clerk.

The opening roll call showed a quorum present with the following absentees:

Senator Boylan.
Senator Brown.
Senator Carroll.
Senator Emerson.
Senator Fitzgerald.
Senator Frawley.
Senator Heacock.
Senator Heffernan.
Senator Hewitt.
Judge Hiscock.
Judge Hogan.
Senator McClelland.
Senator Malone.

Senator Peckham.
Senator Pollock.
Senator Sanner.
Senator Thomas.
Senator Walters.
Senator Weaver.
Senator Wilson.

The President.— Open Court, crier.

The Crier.— Hear ye, hear ye, hear ye, all persons having any business before this High Court of Impeachment in and for the State of New York may now draw near, give their attention, and they will be heard.

The President.— Now, Mr. Marshall, if you will resume your argument, please.

Mr. Marshall.— May it please the Court: At the time of adjournment on Friday I was discussing that clause of the Constitution which relates to the powers of an extraordinary session of the Legislature, and in the course of the discussion I had just reached that clause in the Constitution of Mississippi which had been modeled upon our constitutional provision and in which it was found necessary, in order to enable an extraordinary session of the Legislature to consider the subject of impeachment, to except from the language which had been lifted, as it were, from our Constitution into that of Mississippi, the subject of impeachment.

Since adjournment I have had occasion to give further study and consideration to that subject and have learned, at least to my satisfaction, how it came that the Constitution of Mississippi was so amended and contained the clause to which I have just referred, and why it was deemed necessary to do so. I had had a reference to the two impeachment cases in which Governor Harrison Reed of Florida was involved, but had had no opportunity to read the text of the opinions of the Judges of the Supreme Court of Florida, to whom had been referred various questions connected with those impeachments. And in view of the fact

that these proceedings will throw a profound light upon the question which we are now considering, I will indicate why it was that the Constitution of Mississippi was amended as it was, and will also indicate what was in the minds of the members of the commission of 1872 which framed this provision of the Constitution, and who had before them at the time when they framed that provision, the two proceedings against Governor Harrison Reed, one of which took place in 1868 and the other in 1872.

I shall now take the liberty of calling your attention to that particular case, which I regret I was unable to put into my printed brief.

The first impeachment is dealt with in which is called In the Matter of the Executive Communication of the 9th of November, 1868, and is reported in the 12th of Florida Reports, at page 633.

Judge Werner.—Am I right in assuming that the Constitution of 1874 contained the first provision limiting the powers of the Legislature in extraordinary session?

Mr. Marshall.— In the State of New York. Before that there had been no limitation upon the power of the Legislature in extraordinary session. I had supposed that our Constitution really was the first Constitution in the United States which contained any clause which limited the powers of the Legislature in extraordinary session, but I find that the Constitution of Florida had, previous to 1872, and previous to 1868, contained such a limitation, and that is the subject which I will now discuss to your Honors.

The Governor, in accordance with the Constitution of Florida, as then in force, asked the opinion of the Supreme Court, which consisted of three members, as to the interpretation of the Constitution as bearing on his impeachment. It was shown that an extraordinary session of the Legislature was convened at the capitol on November 3, 1868, by virtue of a proclamation of the Governor. The provision of the Constitution relating to such session, then in force, read as follows:

> "The Governor may on extraordinary occasions convene the Legislature by proclamation, and shall state to both houses, when organized, the purposes for which they have been convened, and the Legislature then shall transact no legislative

business except that for which they are especially convened, or such other legislative business as the Governor may call to the attention of the Legislature while in session, except by the unanimous consent of both Houses."

The Constitution also provided that "the legislative authority of this State shall be vested in a Senate and Assembly, which shall be designated as the Legislature of the State of Florida, and the sessions thereof shall be held at the seat of government of the State." And another section provided that "a majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the presence of absent members in such manner and under such penalties as each house may prescribe."

It was shown that the Senate of Florida consisted of twenty-four members; that at the time when the extraordinary session convened the seats of four of the Senators had been vacated and declared vacant; that the Assembly voted to impeach the Governor, but that at the time when it assumed to present the articles of impeachment to the Senate there were but eight Senators present, a quorum being twelve.

Two questions were presented for decision, first, whether there had been convened under the proclamation of the Governor, in extraordinary session, a Legislature of the State, consisting of a Senate and Assembly, vested with the legislative authority of the State and competent to transact legislative business, and second, if a Legislature, consisting of a Senate and Assembly, duly organized and vested with the legislative authority of the State, had convened in extraordinary session under the proclamation of the Governor, and was, under the Constitution, competent to transact legislative business, were the proceedings of the Legislature, so far as they related to the impeachment of the Governor, of constitutional validity.

Now it was shown that the Governor had not in his proclamation called the session for the purpose of dealing with his impeachment, and he had not called to the attention of the Legislature, while in session, any other legislative business, save that for which it was especially convened by his proclamation.

The court was unanimously of the opinion that, inasmuch as

no quorum of the Senate was in attendance, the extraordinary session of the Legislature had not been constitutionally organized, and that it could not, therefore, act on any subject.

The subject of impeachment therefore could not be dealt with by the extraordinary session because it had not been convened as a Senate, as an Assembly and as a Legislature, indicating therefore that the subject of impeachment could only be dealt with as a subject of legislation and only when both houses were in session and both houses had a quorum; and therefore the whole of the proceedings with regard to the calling of an extraordinary session were null and void; functus officio as it were, and there was no Legislature because there was no quorum of the Senate.

In view of this decision which is fortified by authority, the court did not find it necessary to consider the question as to whether or not the Governor could be impeached at an extraordinary session under the circumstances. Chief Judge Randall, however, concluded his opinion by saying:

> "We are, therefore, of the opinion that even upon the assumption that the proceeding of impeachment is not properly legislative business and that it may be presented at a called session, without the actual express consent of both Houses, there has not been an effective impeachment and suspension from the performance of official duties."

It is to be observed, that the Constitution of Florida merely prohibited the Legislature from transacting "legislative business" other than that for which it was convened, at an extraordinary session. The limitation on the action of the Legislature was, therefore, narrow, and not broad and comprehensive, as that of our Constitution.

This was decided in 1868. The subject of impeachment there was considered, the subject of the power to impeach at an extraordinary session was considered. Our constitutional commission met in 1872 and in 1872 framed this provision, having before it the Florida provision, because that was one of the provisions relating to extraordinary sessions then in existence, and having before it this decision in which the very subject of the rights of impeachment was before the Supreme Court of Florida and they

advisedly omitted to give the power of impeachment to the Legislature while sitting at an extraordinary session.

Now, the second impeachment of Governor Reed is only historically interesting, throwing a side light upon this case not very important; but inasmuch as I have this matter now under consideration, I might as well dispose of that branch of it. That is reported " In the Matter of the Executive Communication filed on the 17th day of April, 1872, in 12 Florida Reports, p. 289." This was also a proceeding prior to the meeting of our Constitutional Commission of 1872. There, Governor Reed, who seems to have been the storm center, again asked the Supreme Court for its opinion as to his official status, the court consisting of the same members as those who acted on the prior occasion. It then appeared that at the regular session of Florida held in 1872, the Assembly, in due form, impeached the Governor, and presented the articles of impeachment to the Senate. That was at a regular session. The Constitution at that time declared that any officer, when impeached by the Assembly, should be deemed under arrest and disqualified from performing the official duties of his office, but any officer so impeached might demand his trial by the Senate within one year from the date of his impeachment. It was admitted that under the terms of this Constitution the impeachment necessarily disqualified the Governor from performing the duties of his office, and the only question presented was as to whether or not he had been acquitted by the Senate, so that he was entitled to resume the performance of his official duties.

The facts bearing on this point were that at the time fixed for the trial of the Governor he interposed an answer to the articles of impeachment, to which there was a replication. A resolution was then offered that the court adjourn, in accordance with a concurrent resolution of the Assembly and Senate for their adjournment on that day. This was not adopted. The Governor then filed a protest against further delay, and especially against delay or continuance until an impossible day or time, within which his office would have expired. After that he moved that the court require the managers to proceed with the evidence, or that he be acquitted and discharged. This motion was not acted upon. A motion was then offered by a senator that the court adjourn. The

record of the Senate showed that this order was adopted, but it was nevertheless followed by an offer of a motion by a senator as a substitute for the previous one to adjourn, that the court should sit from day to day from ten o'clock each day, for the trial of the respondent. The record did not show whether this was adopted. At all events, it was followed by a motion to adjourn, and an adjournment was taken in general words, specifying no time; and on the same day the Assembly, on motion, adjourned sine die for the session, and until the period fixed by the Constitution for the next session of the Senate.

It appeared, therefore, that the court, after failing to act on the motion to acquit and discharge the prisoner, simply adjourned and that the Senate on the same day adjourned for the session.

The question, therefore, which it was necessary for the court to determine, and the only one over which it had jurisdiction was, as to whether or not this action of the Senate operated as a termination of the impeachment proceedings and as an acquittal of the respondent. It was decided that the Senate, being a court, and no judgment having been rendered by it, dismissing the proceedings or directing the acquittal of the prisoner, he was still under impeachment, even though the result of such action was to deprive him of the office to which he had been elected, without trial.

Chief Judge Randall dissented from this conclusion.

It is thus evident that the case of Governor Reed has no bearing upon the question we are now considering, except historically, and by way of suggestion of the possibilities which might ensue from the adoption of the contention of the impeachment managers.

I refer now to the second impeachment. So that if, for instance, by trying to amend the articles of impeachment, and submit new articles of impeachment, that it would be necessary to interpose an answer, and there would be delay during the entire term of the office of the Governor, even under our Constitution, as it has been interpreted by some. The proceedings to which I just referred were the impeachment proceedings of 1868, which indicate historically what was in the minds of the framers of our constitutional provision, and also what was in the minds of the framers of the Mississippi Constitution, and how it was that they made special provision for impeachment.

In this connection it is also useful to point to two provisions of the New York Constitution, where it was found necessary to make explicit exception with reference to impeachments, in the same way that the Constitution of Mississippi did in the clause of its Constitution, to which I referred on Friday, which has just been considered, as indicating that such exception was necessary in order to prevent the application of the general provisions of the Constitution to cases of impeachment, as well as to all other cases.

Now, in article I, section 6, the Bill of Rights, it is declared:

> "No person shall be held to answer for a capital or other infamous crime (except in cases of impeachment, etc.) unless on presentation or indictment by a grand jury."

Care was taken in that clause to see that there should be an exception made in case of impeachment. There was that abundance of caution even in that provision in spite of the fact that there was contained in the Constitution a provision which related specially to the subject of impeachment, and which indicated the manner in which impeachments were to be tried.

Section 13 of Article VI of our present Constitution, Sec. 1, Article VI of the Constitution of 1846, contained those provisions, and yet, side by side with them there was contained in the Bill of Rights this exception in the case of impeachment, with regard to the method of trial or presentation of a charge.

Now again in Article 4, Section 5 of the Constitution, relating to the powers of the executive, it is provided:

> "The Governor shall have the power to grant reprieves, commutations and pardons after conviction, for all offences except treason and cases of impeachment."

Here again notwithstanding the specific language of Article 6, Section 13 with regard to impeachment, it was deemed necessary to except impeachments from the provisions of the Constitution relating to reprieves, pardons and commutations.

When, therefore, in Article IV, Section 4, which immediately precedes that which relates to pardons, we find that, with regard to extraordinary sessions of the Legislature, it is declared that "no subject shall be acted upon except such as the Governor may recommend for consideration," the omission of any exception such

as that which is found in the Constitution of Mississippi with regard to impeachment and which is inserted in the Bill of Rights and in the section in regard to pardons which immediately follows the section relating to extraordinary sessions, it is clear that it must have been the undoubted intention of the framers of the Constitution, that the subject of impeachment was included in the universal phrase, the categorical negative, contained in the section now under consideration. The framers of the Constitution could not have looked at Section 4 of Article IV, which they amended in the Commission of 1872, and which the Legislature passed upon in two executive sessions before it was submitted to a vote of the people, and which was also considered by the Constitutional Convention of 1894, that they could not have looked at Section 4 of Article IV without at the same time having their eyes directed to the word "impeachment" on the very same page; and therefore the omission of such an exception in Section 4 of Article IV speaks volumes as to the intention of the framers of the Constitution.

In this connection, I wish, although it perhaps is a little out of order, to refer to a suggestion made me the other day by one of my associates with regard to the language in which Section 4 of Article IV was framed, "No subject shall be acted upon," that if this body were now to resolve itself into a constitutional convention, and were called upon to frame a clause which would define the powers of the Legislature in extraordinary session, if it intended to select a form of expression which would comprehend everything and omit nothing, it would find it impossible to select any words in the English language which would accomplish that result so effectually as the language which we find in the present Constitution, and I may now add that if they had intended to except "impeachment" from the effect of that provision there is not one of this court who would not have deemed it necessary, sitting in a constitutional convention, to express such an exception in precise and accurate words.

Now I will resume a consideration of cases bearing on the interpretation of clauses similar to ours which the courts have been called upon to determine in various decisions. I was about on Friday to refer to the case of People v. Curry, 62 Pac. Rep.

130 (Cal.). There a question arose as to whether the Legislature could, at an extraordinary session, without the sanction of the Governor's proclamation, propose an amendment to the Constitution. It was held that even though the proposal of an amendment to the Constitution is made by the Legislature as an ordinary enactment of the law, it nevertheless could not, under the provision which limited its activity at an extraordinary session, propose such an amendment. Mr. Justice Van Dyke said:

> "By the constitution the sessions of the legislature shall commence on the first Monday after the first day of January next succeeding the election of its members, and shall be biennial, 'unless the Governor shall in the interim, convene the legislature by proclamation.' Article 4, Section 2. The Constitution, under the article in reference to the executive department, in defining the duties of a Governor, provides that 'he may, on extraordinary occasions, convene the legislature by proclamation, stating the purposes for which he has convened it; and when so convened it shall have no power to legislate on any subjects other than those specified in the proclamation, but may provide for the expenses of the session and other matters incidental thereto.' Art. 5, Sec. 9.
>
> "The Attorney-General contends that proposing constitutional amendments is not 'to legislate on any subjects other than those specified in the proclamation,' and therefore does not fall within this provision of the constitution. It may be admitted that proposing constitutional amendments is not legislation in the sense of passing statutory laws, but it is nevertheless performing a legislative function. It is one of the modes pointed out to initiate the enactment of constitutional law. The performance of such a duty is neither executive nor judicial, but purely legislative. No one would contend that the senate and assembly could propose constitutional amendments, except at the session of the legislature and while it is in session, and not before or afterwards; that is, both houses in session, which constitute the legislature.
> * * *

"The Governor takes no part in the adoption of freeholders' charters, any more than in proposing constitutional amendments; yet the adoption of a city charter in the mode provided is legislation, although not in the same manner as passing bills. It creates, or participates in creating, a municipal government, which can only be done by legislative power. It will hardly be contended that the action of the two houses of the legislature in approving or adopting a freeholders' charter can be done at an extra session, when that subject is not specified in the Governor's proclamation. People v. Blanding, 63 Cal. 333, does not sustain the contention of the appellant. That was a case of the confirmation by the Senate of an appointee of the Governor; and it is said that the provision in the Constitution in reference to legislation other than that specified in the proclamation does not apply in such a case, that being the independent action of the Senate, and not in the nature of legislation at all. It frequently occurs that the Senate of the United States is convened, without calling together Congress, for the purpose of confirming presidential appointments. Particularly is this the case on the coming in of a new administration. The other cases referred to by the attorney-general, such as Hatch v. Stoneman, 66 Cal. 633, 6 Pac. Rep. 734, and Mullen v. State, 14 Cal. 578, 46 Pac. Rep. 670, 34 L. R. A. 262, simply hold that the proposal of amendments to the Constitution is not made by the legislature as in the ordinary enactment of a law.

"The evident purpose of the restriction placed upon the action of the legislature when called together in extraordinary session by proclamation was to regulate the duration of such session, and thus diminish expenses, and the court should not, by a strained or strict construction, defeat these purposes. We are therefore of the opinion, for the reasons stated, that the proposed constitutional amendment proposed at the extra session of the legislature of 1900 is invalid, and that the defendant, as Secretary of State, is justified in certifying the amendment proposed at the regular session of 1899 in lieu thereof."

While in People v. Blanding, 63 Cal. 333, to which reference has just been made, it was held that the prohibition against legislation did not cover the act of confirmation by the Senate of an appointee of the Governor, the Constitution of New York is so framed that unquestionably such action would come within the prohibition of our Constitution, which, as has been repeatedly pointed out, is not confined to legislation, but to action on any subject.

In Wells v. Missouri Pacific R. R. Co., 110 Mo. 286, s. c. 19 S. W. Rep. 531, 15 L. R. A. 847, at an extra session of the Legislature a bill was passed for the prevention of accidents to railroad employees. It was not a subject which had been recommended for action to the Legislature. The Governor subsequently approved of the bill. It was nevertheless held that it was unconstitutional, on the ground that its subsequent approval was not a valid substitute for his designation of the subject of such legislation in his proclamation calling the session. Mr. Justice Barclay, after stating the facts with regard to the passage of the act then under consideration, said:

> "Is it, therefore, to be pronounced void? That depends in the legal energy to be ascribed to those parts of the Constitution first above quoted. In them, as in some other portions of that document, the people have seen fit, for satisfactory reasons, to place limitations upon the full use of legislative power. They have commanded, in the most solemn manner, an observance of certain forms in the process of legislation, because (we may assume) they were led by experience to believe those forms conducive to better results than had been otherwise attained. It is not for us to question the reasons of that policy, or to construe the life out of their deliberate act. When they have said, as in the language before us, that 'the General Assembly shall have no power * * * in extra sessions * * * to act upon subjects other than those specially designated,' etc., it is our duty to give effect to that statement. To hold such language is merely directory would amount, in substance, to amending the instrument so as to import that the assembly should have no such power unless it assumed that power.

Such a reading, we conceive, would reduce the command to a dead letter, and virtually eliminate it. It is a reading we do not feel at liberty to adopt, however great the respect we entertain for the Legislature.

"The power of construing the Constitution must necessarily be lodged in some department of government to insure that practical sanction of its mandates which is essential to preserve their vitality and force. This delicate and sacred trust is devolved upon the judiciary as a manifestation of the political principle that ours is a government of laws, rather than of men. In exercising that power the court should take a large and comprehensive view of constitutional language, mindful that 'every scripture is to be interpreted by the same spirit which gave it forth,' and with a deep desire to enforce its full and exact meaning. Thus viewing the very definite provision before us, we cannot regard it otherwise than as mandatory. When the people have declared a certain form indispensable to the proper expression of their will, it is no part of our function to adjudge that form unnecessary or immaterial. On the contrary, our bounden duty is to enforce that declaration. It follows that the 'Act' in question cannot be sustained as a constitutional exertion of the lawmaking power. That position being reached, it is immaterial that the governor, by his formal signature, in due course, approved the bill after its passage by the General Assembly. By the terms of the Constitution the legislative power to act in the premises depended on the governor's taking the initiative by a proclamation or a message. His subsequent approval cannot be accepted as a substitute for those earlier steps which the fundamental law prescribes. Davidson v. Moorman (1871), 2 Heisk. 575; St. Louis v. Withaus (1887), 90 Mo. 646, 6 West. Rep. 229."

To the same effect are Manor Casino v. State, 34 S. E. Rep. (Tex.) 769; Re Governor's Proclamations, 35 Pac. Rep. (Col.) 530; Ex parte Caldwell, 138 Fed. Rep. 492; Neilsen v. C. B. & Q. R. R. Co., 187 Fed. Rep. 394.

Peeople ex rel. Carter v. Rice, 135 N. Y. 473, related to the validity of the apportionment act of 1892, adopted at an extra-

ordinary session of the Legislature called by Governor Hill, who recommended the Legislature to pass such an act. The Constitution provided for the enumeration of the inhabitants decennially and for an alteration of the Senate districts and apportionment of members of Assembly at "the first session after the return of every enumeration." A question arose as to whether or not an extraordinary session was to be deemed the "first session" of the Legislature, within the meaning of this constitutional provision. In the course of his opinion Judge Peckham said:

> "The Constitution provides for the assembling of the Legislature on the first Tuesday in January in each year. When it adjourns sine die, has not the session of the Legislature ended? The term of office of its members may not have ended, but the legislative session has certainly terminated by an adjournment without day. It could not again assemble and perform any valid act unless the Governor, under the special power given him by the Constitution, should convene it. When thus convened the Legislature is in session, and it is clearly not the same session which was ended by a prior adjournment thereof, without day. * * * If the Governor should call such a session and not recommend this subject for consideration, it might then be a question which of the two constitutional provisions should prevail, and which provided for the passage of the apportionment act at the first session, or the one which provided that at an extraordinary session the Legislature should consider no other subject than such as should be recommended to it by the Governor. If the former provision should be held to prevail, the act could be passed, and if the latter, it could not. In such case the extraordinary session would not be the first session of the Legislature within the meaning of the Constitution. Admitting that unless the Governor recommended the consideration of the subject to the Legislature at the extraordinary session called by him, an apportionment act could not then be passed, it by no means follows that the Legislature could not pass the act at such extraordinary session, provided the subject were recommended to its consideration by the Governor. In the one case the extraordinary session is not the first session after the return of the enumeration within the meaning of the Constitution, and in the other case it is."

It is significant that the Constitution of 1894, in dealing with the subject of enumeration and reapportionment, both in section 4 and in section 5 of article III, provided for the alteration of Senate districts and the apportionment of members of Assembly by the Legislature "at the first regular session after the return of every enumeration." This is a plain manifestation of the intention, that the powers of the Legislature at an extraordinary session should be circumscribed, so that even the important political function of apportionment should be exercised at a regular session only, and not at an extraordinary session of the Legislature. Thus even the Governor is limited in his designation of subjects which may be acted on at an extraordinary session of the Legislature.

So that the effect of the work done by the Constitutional Convention of 1894 has been to further limit the powers of the Legislature at an extraordinary session, attention of the convention having been called to the situation which arose in consequence of the fact that Governor Hill called an extraordinary session for the purpose of at that time taking up the subject of the apportionment of the State after the enumeration which had just preceded it.

As further bearing on the question as to what may be done at an extraordinary session of the Legislature, attention is called to article VI, section 11, of the Constitution, which provides:

> "Judges of the Court of Appeals and Justices of the Supreme Court may be removed by concurrent resolution of both houses of the Legislature, if two-thirds of all the members elected to each house concur therein. All other judicial officers, except justices of the peace and judges or justices of inferior courts not of record, may be removed by the Senate, on the recommendation of the Governor, if two-thirds of all the members elected to the Senate concur therein. * * *"

Would it be contended for an instant that, in the absence of recommendation by the Governor, judges of the Court of Appeals or justices of the Supreme Court could be removed by concurrent resolution at an extraordinary session of the Legislature, or at a self-convened session?

The practical interpretation of this provision of the Constitution indicates that this has been the due taking of the subject. Governor Higgins found it necessary to recommend to the Legislature of 1905 the consideration of the charges against Mr. Justice Hooker and at the present extraordinary session of the Legislature of 1913 Governor Sulzer found it necessary to recommend action by the Legislature in extraordinary session upon the charges which had been presented against Mr. Justice Cohalan.

As further bearing upon this subject I desire to call your attention to a practical interpretation, as it were, of the Constitution with regard to impeachment proceedings or impeachment proceedings against the Governor, which is to be found in the debates of the Constitution Convention of 1846:

It there appears that on the 14th of July, 1846, the Sixth Section of the Article on the Executive came up for consideration. This section as submitted by the Committee on the executive reads as follows:

> "In case of the impeachment of the Governor or his removal from office, death, inability from mental or physical disease, resignation, absence from the State, the powers and duties shall devolve upon the Lieutenant-Governor for the residue of the term or until the Governor, absent or impeached, shall return or the disability shall cease. * * *"

In relation to this section, Mr. Michols said that the Governor, in a fit of mental alienation, in the spring or summer might, in a very philanthropic mood, pardon all the convicts in the prisons and, if his insanity was to be determined only by the Legislature (as was suggested) he might, when bereft of his reason, do this and much more mischief during the six months which would intervene before the meeting of the Legislature.

Then Mr. Stow suggested this clause:

> "The Legislature may declare the inability of the Governor or the person administering the duties of the office of governor by a vote of four-fifths of all the members elected to each house and for this purpose the chief justice of the Supreme Court may convene the legislature."

Later Mr. Stow renewed his proposition, modified so as to give two-thirds of the Legislature power to decide on the question of inability when the Governor should be considered incompetent, and giving the Speaker of the Assembly power to convene the Legislature for that purpose. Mr. Stow said he never could consent to leave the word "inability" there without providing some tribunal for ascertaining it. It was such a question as this that shook the British throne to its center, because they did not provide means to decide when the king was disabled. The safest tribunal he could devise was the Legislature, by a two-thirds vote. He was loath to take up time by a single remark, but he could not consent to involve the country in danger of revolution because it might take a little time to make provision for this contingency. The amendment was rejected.

So it was clearly seen that even at that time, although there was no provision then with regard to calling an extraordinary session and there were then only regular sessions of the Legislature, that it was thought desirable and necessary to make some provision for the contingency which would make it necessary to deal with the Governor if his mental or physical condition was such that it required consideration, but it was found that it was not desirable to do that, but it was better to wait until the next session of the Legislature should convene before any action should be taken in that regard.

VIII.

The practical interpretation given to the provision of the Constitution now under discussion indicates that, ever since 1875, it has been the uniform practice of the various Governors of this State, who had occasion to call extraordinary sessions, to specially recommend for action by the Legislature, not only subjects for legislation, but also all other subjects as to which action was desired.

This is a potent fact even in the interpretation of the Constitution.

People ex rel. Einsfeld v. Murray, 149 N. Y. 376.
People v. Home Insurance Co., 92 N. Y. 337.

In 1888, Governor Hill recommended the Legislature to take action with regard to the employment of convict labor in penal institutions of the State. The question was raised whether, under the terms of this recommendation, the Legislature had the power to consider the employment of convict labor other than that of convicts in State prisons. Whereupon Governor Hill presented a further recommendation, that the question of the employment of convict labor be considered not only in connection with State prisons, but also in jails, penitentiaries and other similar institutions.

In 1898, Governor Black recommended the passage of a State Election Law, and inasmuch as, under that law, it became his duty to appoint a State Superintendent of Elections, the Governor specifically recommended action with regard to the appointment and confirmation of such State Superintendent.

In 1905, Governor Higgins recommended an examination by the Legislature into the charges presented against Mr. Justice Hooker.

In 1908, Governor Hughes recommended to the Legislature, then in extraordinary session, the advisability of taking action in connection with the ceremonies for the interment of the remains of George Clinton, which were removed from the Congressional cemetery in Washington, to Kingston.

In 1913, the Legislature, upon the recommendation of Governor Sulzer, took action with regard to the accusations made against Mr. Justice Cohalan.

He, as other Governors had done before him, submitted to the Senate while sitting at the extraordinary session, the names of various nominees for public office, for confirmation.

Whenever an extraordinary session has been held, not even an appropriation bill to cover the expenses of the session has been attempted to be passed except on the specific recommendation of the Governor.

There is not to be found in the history of any of the States a single instance of the institution of impeachment proceedings at an extraordinary session of the Legislature. It has been recently claimed that the impeachment of Governor Butler, which occurred in Nebraska in 1865, took place at an extraordinary session, but

in an article by Albert Watkins, the Historian of the Nebraska State Historical Society, which recently appeared in the New York Times, it is shown that this was not the fact, but that the impeachment took place at a regular session of the Legislature.

IX.

But it is argued that, when the Assembly exercises the power of impeachment, it acts judicially. While in one sense it may be said that, by voting an impeachment, it is setting the judicial machinery in motion, in that articles of impeachment must precede the trial of an impeachment; yet, as has been seen from the authorities already considered, an impeachment is merely the equivalent of an indictment, and the Assembly, when it makes its accusation in the form of an impeachment, is performing no other or different function than those exercised by a grand jury when it finds an indictment. When a grand jury finds an indictment, it does not act judicially, any more than, in those jurisdictions where informations have taken the place of indictments, the filing of an information by a district or State attorney can be said to be a judicial act.

In United States v. Belbin, 46 Fed. Rep. 381, Judge Hughes said:

> "The function of a grand jury is not to try persons accused of crime, but merely to examine whether and what crimes have been committed, to designate the persons at whom the evidence points as criminal, and, by indictment, to charge such persons before the Court and County as answerable for the crimes which have been committed. Originally Grand Jurors were chosen for the purpose of giving testimony to their fellow-jurors, as to the crimes committed within the county. * * * The grand jury does not try; it merely accuses with a view to trial."

The Assembly, with respect to an impeachment, and the grand jury, with respect to an indictment, perform the function of accusers, and their act is administrative and not judicial. It does not constitute a judgment. It does not require the accused to be heard. It can proceed without notice to the accused. It is only a step in the process of conferring upon the tribunal which

is to try the indictment or the impeachment, jurisdiction of the subject matter.

The very oath administered to the members of this Court indicates that the Assembly cannot possibly be considered as acting otherwise than as accuser, as a party, not as a judge. The solemn oath was administered here the other day — it has occurred to me; this is the language of it:

> "I do solemnly swear to truly and impartially try and determine the impeachment of the Assembly of New York against William Sulzer, Governor of said State, according to the evidence, so help me God."

It is the Assembly which appears against the Governor. It is the accuser. It is the party which is represented here as the accuser, and to say that it is acting judicially seems to be entirely at odds with the very conception of a judicial act.

In Sinking-Fund Cases, 99 U. S. 700–761, Mr. Justice Field said:

> "Wherever an act undertakes to determine a question of right or obligation, or of property, as the foundation upon which it proceeds, such an act is to that extent a judicial one, and not the proper exercise of legislative functions."

In People v. Murphy, 65 App. Div. 126, it was said that by "judicial act" is meant the power to hear and determine controversies between adverse parties, or questions in litigation.

In Supervisors of Onondaga County v. Briggs, 2 Denio, 26, 32, it was said to be the performance of a duty which has been confided to judicial officers to be exercised in a judicial way.

A judicial act must be an act performed by a court touching the rights of parties, or property, brought before it by voluntary appearance, or by the prior action of ministerial officers.

> State v. Tippecanoe County, 45 Ind. 501, 506.
> Schoultz v. McPheeters, 79 Ind. 373, 377.

Or, as it was expressed in Rhode Island v. Massachusetts, 12 Pet. 657, 718, "what shall be adjudged or decreed between the parties, and with which is the right of the case, is judicial action, by hearing and determining it."

The New York Code of Criminal Procedure, section 354, defines an indictment as an accusation in writing, presented by a grand jury to a competent court, charging a person with crime.

People v. Dumar, 106 N. Y. 502, 506.
People v. Flaherty, 79 Hun, 48, 50.

The finding of an indictment or the voting of an impeachment, viewed in the light of these authorities, does not therefore constitute a judicial act, in any sense of the term.

But even if, by a stretch of the imagination, an indictment or an impeachment could be said to be a judicial act, it is difficult to appreciate the materiality of such a conclusion to the interpretation of the constitutional provision now under consideration. It does not create any exception to the limitation which the Constitution imposes upon the Legislature or of the Assembly. It does not limit the restriction imposed upon them, with respect to action on subjects proper to be considered by them. It does not permit them to exercise judicial powers. If it can be conceived that the three great powers of government could at any time be exercised by the Legislature, or any branch of it, the language of the Constitution applies equally to legislative, judicial and executive action. It must be conceded that it applies to the appointing power, or to the power of confirming appointments to public office, and with that concession it is impossible to say that this constitutional provision was intended to be confined in its operation to subjects of legislation, and that there was no prohibition against dealing with other subjects at an extraordinary session of the Legislature, when the Governor did not recommend such action.

The limitation upon the exercise of power at extraordinary sessions of either the Legislature or the Senate is not confined to the exercise of legislative power alone, for the Senate can under no circumstances exercise legislative power at an extraordinary session when it sits alone, by itself, without the Assembly. If, therefore, the limitation upon the power to act as applied to the Senate is not confined to legislation, how can it be so confined when applied to the Assembly when it is convened together with the Senate at an extraordinary session of the Legislature?

It clearly follows that the contention of the Impeachment Managers, that the limitation on the power of extraordinary sessions is a limitation upon action "along legislative lines," is fallacious.

The term "Legislature" as employed in our system of government, like the word "parliament," implies a bicameral or speaking biologically, a bi-cellular structure. The Senate and the Assembly, The House of Lords and the House of Commons are the constituent parts of a constitutional unit. Though the two Houses of which our Legislature is composed rarely meet jointly, the only time when they do not sit together is when the Senate alone is convened to consider appointments proposed by the Governor. The very fact that provision is made for an independent session of the Senate only, and none which enables the Assembly to be convened independently, demonstrates that silence under such circumstances means negation; that expressio unius est exclusio alterius; that the Assembly when called to take part in an extraordinary session of the Legislature, of which it forms a component part, meets as a part or branch of the Legislature in connection with the Senate, and not otherwise, and cannot, therefore, initiate action on any subject at such a session.

The very fact that neither house shall without the consent of the other adjourn for more than two days (Art. III, Sec. 11), indicates that, with the exception of the single instance when the Senate may meet alone when called in extraordinary session, the Assembly and the Senate must act together.

As a grand jury cannot sit except in connection with the court, so the Assembly cannot sit to discharge like duties, except in connection with the Senate, and when both are in session at the same time as branches of the Legislature. If the Assembly should meet spontaneously and find articles of impeachment, what could it do with them unless the Senate were in session?

That is shown by the decision in the case of Governor Reed. It was absolutely powerless, although it voted articles of impeachment, to have anything done with them or to make the action effective because the Senate was not in session with a quorum.

The theory of the Constitution is, that the Assembly can be in session only when the Senate is, and only as a part of the Legis-

lature. The Senate is expressly authorized to sit alone, and at a time when the Assembly is not in session, but, as we have shown, only when called in extraordinary session by the Governor. The fact that the like power was not conferred upon the Assembly is irrefragable evidence that it was not intended that the Assembly should possess such power for any purpose.

I have cited cases which show that it has been considered in various bodies, like Congress in the case of Belknap. Even the Senate, sitting as a court of impeachment, cannot act while the Assembly is not in session. And that was also held in the second of California. I am aware of the fact that there is a contrary decision in second of Kansas, but that question is of very little importance. It is merely an incident to this discussion.

In 3 Hinds Precedents of the House of Representatives, section 2006, it is stated, that it was decided by the United States Senate, sitting as a court for the impeachment of William W. Belknap, the late Secretary of War, that the impeachment trial could only proceed when Congress was in session. On June 19, 1876, the counsel for the respondent asked for a postponement of the trial until some time in the following November. Thereupon a question arose as to whether or not the trial might proceed when the House of Representatives was not in session, and Senator Ingalls, of Kansas, asked for an opinion from the Managers of the House of Representatives. It appeared that they were not agreed on the subject. Subsequently while an order was pending providing that the trial should proceed on July 6th, Senator Morton, of Indiana, proposed to add thereto as an amendment the following: "Provided that impeachment can only proceed in the presence of the House of Representatives." This motion was subsequently withdrawn by Senator Morton, whereupon Senator Conkling, of New York, offered the proviso in the form: "Provided that impeachment can only proceed while Congress is in session." That proviso was agreed to and was thereafter acted upon.

In Fowler v. Pierce, 2 Cal. 172, it was recognized as being necessary for the House to remain in session while the Senate was in session for the trial of an impeachment.

The President.— Mr. Marshall, if I recollect correctly, the Assembly was not in session during the proceedings in Saratoga at which Judge Barnard was tried.

Mr. Marshall.— I think your Honor is correct. That was one of the subjects discussed before Congress in the Belknap case.

The President.— I didn't mention it by way of argument, but to see if my recollection is correct.

Mr. Marshall.— Your recollection is entirely correct, your Honor. But as I have stated, that is of no consequence, because there the Assembly in regular session impeached and then presented the matter to the Senate while it was in regular session, and then the Senate, or the Senators, or a major part of them, and the Court of Appeals, or a major part of the Judges of the Court of Appeals, resolved themselves into a court of impeachment and had this proceeding and heard the case in the absence of a session of the Assembly.

X.

It will doubtless be argued that, under our interpretation, the Governor could not be impeached except at a regular session of the Legislature, since it would be unnatural for him to recommend to the Legislature, at an extraordinary session, the consideration of the subject of his impeachment. This, it is claimed, constitutes a reductio ad absurdum of our contention.

That, however, is a complete begging of the question. The mere fact that the framers of the Constitution have not provided for the contingency of the impeachment of the Governor at an extraordinary session does not deprive the clearly conceived limitations upon the powers of an extraordinary session of their undoubted significance or render them ineffectual in whole or in part.

In People ex rel. Bolton v. Albertson, 55 N. Y. 50, 55, Judge Allen said:

> "The restraints of the Constitution upon the several departments, among which the various powers of government are distributed, cannot be lessened or diminished by inference and implication; and usurpation of power, or the exercise of power in disregard of the express provision or plain intent

of the instrument, as necessarily implied from all its terms, cannot be sustained under the pretence of a liberal or enlightened interpretation, or in deference to the judgment of the legislature, or some supposed necessity, the result of a changed condition of affairs. (1 Kent's Com. 162; Barto v. Himrod, 4 Seld. 483; Taylor v. Porter, 4 Hill, 144; Warner v. People, 2 Den. 272; People v. N. Y. C. R. R. Co. 24 N. Y. 485; Schenectady Observatory v. Allen, 42 id. 404)".

As to every officer in the State who is subject to impeachment, other than the Governor, the language of the Constitution can be given full force and effect, according to our interpretation; whereas, under that construction which the Impeachment Managers seek to impart to it, this language is deprived of all efficacy, so far as it concerns the impeachment of all of such officers, and renders the recommendations of the Governor with respect thereto mere idle ceremony, without significance or importance.

While it is true that, in the case of the Governor, there is no unlikelihood that he would recommend his own impeachment, yet the argumentum ab inconvenienti which is sought to be based on that circumstance is entitled to but little weight. The regular sessions of the Legislature are, as to duration, entirely within the control of the Legislature. Ordinarily they continue until June of each year. There would, therefore, be a period of not to exceed seven months during which the power to impeach the Governor would be suspended. It is most unlikely that the acts on which such impeachment may be based would arise immediately after adjournment. In all likelihood, if they ever occurred, there would be a period of not to exceed three months between the time of their discovery and the meeting of the regular session of the Legislature. In the present case the time which will elapse between the date of the impeachment and the convening of the legislative session of 1914, is but four and one-half months. But even if it should happen that seven months would elapse before impeachment proceedings could be instituted, that would not justify the stretching of the Constitution to such an extent as is proposed in the present instance, and the doing of violence to the fair intendment of its language.

We have heard it stated that shocking conditions might result if this power of impeachment should not exist at an extraordinary session or at a self-convened session of the Assembly, and the argument really must be that that power must exist at a self-convened session of the Assembly in order to avoid these terrible consequences, because it is very rare that there is an extraordinary session of the Legislature called together by the Governor. Only in recent years has there been much occasion to use the power given to the Governor of calling together the Legislature in extraordinary session.

It has been said by one of the deputy attorney-generals in his argument before Mr. Justice Hasbrouck, that if this power did not exist the Governor, on the day after the Legislature adjourned, could commit murder, or burn down the capitol, and he could not be impeached. He could be indicted and sent to prison, and from his cell he could sign the pardon that would set him free.

If he committed a crime, if he committed burglary, or if he committed any of these shocking offenses, he certainly is not above the law, and he would be incarcerated, and there would be a case when the Lieutenant-Governor under the interpretation given to the Constitution by Justice Hasbrouck, could exercise the functions of Acting Governor, and the State would be free from this terrible calamity which has been suggested.

But, it is absolutely wrong to say that in such a case as that the Governor could pardon himself. It is very doubtful whether the Governor could pardon himself. The Acting Governor could only exercise the pardoning power, the power to grant commutations and exercise the power of reprieve, only after conviction of the Governor; and before conviction the Governor could not pardon himelf. The moment he is convicted of any crime, under section 510 of the Penal Code, he would forfeit his position and could not pardon himself, and therefore these terrible consequences which have been pictured to us, are purely imaginary, and are, as much of the argument we have heard here against our side is, in total disregard of the language of the Constitution and of the language of the law.

The Governor, as has been shown, may in the exercise of his unlimited discretion refuse to call an extraordinary session of the Legislature, even when a conceded necessity therefor exists and the machinery of legislation must in such a case rust in idleness until the regular session begins. Would not such delay be infinitely more injurious to the State than that involved in the postponement until the regular session of action with respect to the impeachment of the Governor? Why, then, should so much stress be laid on the few months which may elapse, before in a case of rare occurrence, impeachment proceeding may be started?

Throughout our law there is recognized the desirability of enabling those in authority as well as the public to undergo the process of what is well characterized as "cooling time;" so as to permit sober second thought to gain its soothing sway, and to avoid what the great Chief Justice described in Fletcher v. Peck, 6 Cranch, 136, as "the violent acts which might grow out of the feelings of the moment," and we might add those which are artificially stimulated to compass the destruction of a political opponent.

The argumentum ab inconvenienti is one which is frequently fallacious, and is often more honored in the breach than in the observance. It has perhaps never been better criticised than it was in the leading case of Newell v. People, 7 N. Y. 9, where Chief Judge Ruggles, at page 109, said:

> "And I enter upon the examination thoroughly imbued with the principle that the task of determining that a law is void by reason of its repugnancy to the Constitution is at all times one of extreme delicacy; that it ought seldom, if ever, to be done in a doubtful case; that it is not on slight implication or vague conjecture that the Legislature is to be pronounced to have transcended its powers (Fletcher v. Peck, 6 Cranch, 128); that it is only in express constitutional provisions, limiting legislative power and controlling the temporary will of a majority by a permanent and paramount law, settled by the deliberate wisdom of the nation, that we can find a safe and solid ground for the authority of courts of justice to declare void any legislative enactment; that in construing the language of a Constitution we have

> nothing to do with arguments ab inconvenienti, for the purpose of enlarging or contracting its import, the only sound principle being to declare it a lex scripta est, to follow and obey (People v. Merrill, 21 Wend. 584); that there is no safe rule for construing the extent or the limitation of powers in a Constitution other than is given by the language of the instrument which confers them, taken in connection with the purposes for which they were conferred."

This principle was applied in Settle v. Van Evrea, 49 N. Y. 280, where the question arose as to whether or not Commissioners of Appeals were subject to all of the provisions affecting Judges of the Court of Appeals and other courts, the Commissioners having been appointed for the purpose of disposing of certain cases pending in the Court of Appeals on a day specified. It was held that they were not debarred from acting as referees, although Judges of the Court of Appeals were so debarred, simply because the Commissioners were not named in the clause of the Constitution which prohibited Judges of the Court of Appeals from acting as referees. In the course of his opinion Judge Allen used language which it would be well to dwell upon in the present instance, since it meets the argument of which so much has been made, and indicates that the only safe rule of constitutional interpretation is to deal with the Constitution as it is written and to leave it to the people to correct any defects or to supply any omissions. He said:

> "If to meet exigencies and to prevent mischiefs it is allowable, sometimes, to depart from the strict letter of a law and imply an intent not already expressed in the construction of ordinary statutes, which may be framed in haste and with none of the formalities that attended the preparation of a State Constitution, it would be dangerous in the extreme to extend the operation and effect of a written Constitution by construction beyond the fair scope of its terms merely because a restricted and more literal interpretation might be inconvenient and impolitic, or because a case may be supposed to be, to some extent, within the reasons which bid to the introduction of some particular provision plain and precise in its terms.

"That would be pro tanto to establish a new Constitution and do for the people what they have not done for themselves. The terms of the instrument being clear and free from doubt and having a well understood meaning and application, the better way is to stand upon the maxim ita lex scripta est, and leave any supposed defect or omission to be remedied by the people or by legislation."

In People ex rel. Gilbert v. Wemple, 123 N. Y. 485, this principle was followed. There article 6, section 13, of the Constitution, relating to term of Court of Appeals Judges and Supreme Court Justices, was the subject of consideration. It read:

"The official terms of the said justices and judges who shall be elected after the adoption of this article shall be fourteen years from and including the first day of January next after their election. But no person shall hold the office of justice or judge for any court longer than until and including the last day of December next after he shall be seventy years of age. The compensation of every judge of the Court of Appeals, and of every justice of the Supreme Court, whose term of office shall be abridged pursuant to this provision, and who shall have served as such judge or justice ten years or more, shall be continued during the remainder of the term for which he was elected."

The relator was elected a Supreme Court Justice in November, 1865, for a term of eight years, commencing January 1, 1866. In November, 1873, he was re-elected for a term ending December, 1887. But in 1882 he became seventy years old and accordingly his term ended on December 31, 1882, after he had served seventeen years as a Supreme Court Justice.

The question presented was whether the ten years' service referred to in the Constitution was to be ten years of the term abridged. The Attorney-General so contended.

Judge Peckham, however, said:

"If the term expire by reason of the running of the full term of fourteen years before the judge or justice reaches the age of seventy and he thereupon goes out of office, the provision of the Constitution does not meet his case. His

term has not been abridged, although he may have been twenty, thirty, or even more years on the bench, and he has already received compensation for the full term for which he was elected. This only proves that the constitution provision fails to meet a deserving case. * * * That one fact is not enough to cause us to impart words into the Constitution which are not there, for the purpose of altering the meaning of that instrument as it actually reads. It seems to me that even greater care and caution should be used in adding or striking out words from a provision in our organic law on the ground that it is necessary in order to obtain the true meaning of such provisions, than if such provisions were contained in a statute because the fundamental law of the State is presumed to be and indeed is prepared with the very greatest deliberation and adopted only after every opportunity has been had by different legislatures and by the people at large. To construe the provision as the appellant claims it should be construed, is to add words which are not there now and which when then added alter materially the meaning of the provision."

In this connection it is well to ponder the oft-quoted words of Chief Justice Bronson in Oakley v. Aspinwall, 3 N. Y. 368, where he said:

"It is highly probable that inconveniences will result from following the Constitution as it is written. But that consideration can have no weight with me. It is not for us, but for those who made the instrument to supply its defects. If the Legislature or the Courts may take that office upon themselves; or if under color of construction, or upon any other specious ground, they may depart from that which is plainly declared, the people may well despair of ever being able to set a boundary to the powers of the Government. Written constitutions will be worse than useless. Believing, as I do, that the success of free institutions depends on a rigid adherence to the fundamental law, I have never yielded to considerations of expediency in expounding it. There is always some plausible reason for the latitudinarian construc-

tions which are resorted to for the purpose of acquiring power — some evil to be avoided, or some good to be attained by pushing the powers of the government beyond their legitimate boundary. It is by yielding to such influences that constitutions are gradually undermined, and finally overthrown. My rule has ever been to follow the fundamental law as it is written, regardless of consequences. If the law does not work well, the people can amend it; and inconveniences can be borne long enough to await that process. But if the legislature or the Courts undertake to cure defects by forced and unnatural constructions, they inflict a wound upon the Constitution which nothing can heal. One step taken by the Legislature or the Judiciary in enlarging the powers of the Government opens the door for another, which will be sure to follow; and so the process goes on, until all respect for the fundamental law is lost, and the powers of the Government are just what those in authority please to call them."

XI.

It will also be asserted by the Impeachment Managers, that this objection is technical in its nature; that the accused should not be permitted to avoid a hearing upon the charges that have been made against him, that he should meet those charges by evidence, and not by resort to constitutional or legal objections.

This is not a novel position from the standpoint of history. It is as old as tyranny, as ancient as lawlessness. Those who controlled the machinery of the Star Chamber in the days of the Tudors; those who issued lettres de cachet in the reign of Louis XV; Robespierre and Marat, when during the Reign of Terror they plied the guillotine, the autocrat of all the Russias, when he has summarily consigned the flower of his people to the dungeon and the exile; the mobs which in our own land have resorted to lynching have been actuated by a common abhorrence of legal procedure according to established principles, and have viewed the restraints of the written law and of elemental justice as technicalities. And we have now in our day come to the task when an appeal to the supreme law — the Constitution — which enshrouds the self-imposed restraints of a free people, is likewise

treated as a technicality whenever it is believed that it may wrest from immolation the victim of partisan fury, or from confiscation the property of those against whom popular prejudice has been aroused.

That would be a sad day in our judicial history when reliance upon the Constitution and the law of the land were to be regarded as technical, or were to be contemned and deemed unworthy. So long as our people may proudly boast that this is a government of laws and not of men, so long will its liberties be preserved and its institutions perpetuated. But whenever the time shall come when the ignorance of the mob, its passions and its prejudices, or when considerations of mere political expediency, may prevail against the word of the organic law, when the time-honored concepts of the " process of law " and " the law of the land," shall be treated as mere jests, and become the objects of derision and contempt, when the usurpation by one branch of the government of the powers which belong to another, may be regarded with equanimity, then the hour of disintegration will be at hand, and it will only require one endowed with the necessary audacity to ride rough-shod over the ruins of the Constitution, and that system of government which has made of us a people happy, law-abiding and free, will give way to the hysterical caprices of tyranny and despotism.

We are confident that this tribunal will not shrink from the duty of applying the Constitution regardless of the outcries of those who, for ulterior reasons, are prepared to strike it down if it stands in the way of the accomplishment of their selfish purposes. It is one of the glories of our Court of Appeals, that it has steadfastly closed its ears to the discordant ravings of those who have from time to time demanded that it do violence to the Constitution and the law, in order that the victim whom they have sought to immolate might not escape their vengeance. It has never been terrorized or coerced by threats or cajoled by flattery or influenced by ridicule, or by the fear of unpopularity, into doing an act of positive injustice and the sneer which regards the taking of shelter under the Constitution, as a technicality, has never led it to withdraw its protection from him who sought it.

With all solemnity we express the confidence that this tribunal will not be swayed from a proper and due regard for the mandate of the Constitution, by the unworthy suggestion that to do so is to permit a technicality to triumph. To dismiss the articles of impeachment which have been presented to this tribunal for lack of jurisdiction would not be a triumph of technicality. It would be a vindication of that sacred instrument to which we all owe fealty, and upon the security of which, as the foundation of our political existence, depends the welfare of our beloved Commonwealth.

APPENDIX A.

ALABAMA (1901).

Art. IV. Sec. 76.— Legislative Department.

"When the Legislature shall be convened in Special Session there shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling such session, except by a vote of two-thirds of each House. Special Sessions shall be limited to thirty days."

ARIZONA (1910).

Art. IV, Subd. 2, Sec. 3.

"* * * * The Governor may call a special session whenever in his judgment it is advisable. In calling such special session, the Governor shall specify the subjects to be considered at such session, and at such session no laws shall be enacted except such as relate to the subjects mentioned in such call."

ARKANSAS (1874).

Art. VI, Sec. 19. Executive Departments.

"The Governor may by proclamation, on extraordinary occasions, convene the General Assembly at the seat of Government, or at a different place, if that shall have become since their last adjournment, dangerous from an enemy or contagious disease; and he shall specify in his proclamation the purpose for which they are convened and no other business than that set forth therein shall be trans-

acted until the same shall have been disposed of; after which they may, by a vote of two-thirds of all the members elected to both houses, entered upon their journals, remain in session not exceeding fifteen days."

California (1879).

Art. V, Sec. 9.

"He (Governor) may, on extraordinary occasions, convene the Legislature by proclamation, stating the purposes for which he has convened it, and when so convened it shall have no power to legislate on any subjects other than those specified in the proclamation, but may provide for the expenses of the session and other matters incidental thereto."

Colorado.

Art. IV, Sec. 9.

"The Governor may, on extraordinary occasions, convene the general assembly by proclamation, stating therein the purpose for which it is assembled; but at such special session no business shall be transacted other than that named in the proclamation, he may by proclamation convene the Senate in Extraordinary Session for the transaction of executive business."

Connecticut.

Art. III, Sec. 2.

"There shall be one stated session of the General Assembly, to be holden in each year, alternately at Hartford and New Haven on the first Wednesday of May and at such other times as the General Assembly shall judge necessary; the first to be holden at Hartford; but the person administering the office of Governor, may on special emergencies convene the General Assembly at either of said places at any other time, and in case of danger from the prevalence of contagious diseases, in either of said places, or other circumstances, the person administering the office of Governor, may by proclamation convene said Assembly at any other place in their State."

Delaware (1897).

Art. III, Sec. 16.

"He, Governor, may on extraordinary occasions convene the General Assembly by proclamation; or in case of disagreement between the two Houses, with respect to the time of adjournment, adjourn them to such time as he shall think proper, not exceeding three months. He shall have power to convene the Senate in extraordinary session by proclamation for the transaction of executive business."

Florida (1885).

Art. IV., Sec. 8.

"The Governor may, on extraordinary occasions, convene the Legislature by proclamation, and shall in his proclamation state the purpose for which it is to be convened, and the Legislature when organized shall transact no legislative business other than that for which it is specially convened, or such other legislative business as the Governor may call to its attention while in session, except by a two-thirds vote of each house."

Georgia (1877).

Art. V., Sec. 1, Par. XIII.

"* * * He (Governor) shall have power to convoke the General Assembly on extraordinary occasions, but no law shall be enacted at called sessions of the General Assembly except such as shall relate to the object stated in his proclamation convening them."

Idaho (1889).

Art. IV., Sec. 9.

"The Governor may on extraordinary occasions, convene the Legislature by proclamation, stating the purposes for which he has convened it, but when so convened it shall have no power to legislate on any subjects other than those specified in the proclamation; but may provide for expenses of the session and other matters incidental thereto. He may also, by proclamation, convene the Senate in extraordinary session for the transaction of executive business."

Illinois (1870).

Art. V., Sec. 8.

"The Governor may, on extraordinary occasions, convene the General Assembly, by proclamation, stating therein the purpose for which they are convened, and the General Assembly shall enter upon no business except that for which they are convened."

Indiana (1851).

Art. IV., Sec. 9.

"* * * But if, in the opinion of the Governor, the public welfare shall require it, he may, at any time, by proclamation, call a Special Session."

Iowa (1857).

Art. IV., Sec. 11.

"He, Governor, may, on extraordinary occasions, convene the General Assembly, by proclamation, and shall state to both Houses when assembled, the purpose for which they shall have been convened."

Kansas (1859).

Art. I., Sec. 5.

"He (Governor) may, on extraordinary occasions, convene the Legislature by proclamation, and shall at the commencement of every session, communicate in writing such information as he may possess, in reference to the condition of the State, and recommend such measures as he may deem expedient."

Kentucky (1890).

Sec. 80.

"He (Governor) may, on extraordinary occasions, convene the General Assembly at the seat of Government, or at a different place of (if) that should have become dangerous from an enemy or from contagious diseases. * * * When he shall convene the General Assembly it shall be by proclamation, stating the subjects to be considered, and no others shall be considered."

Louisiana (1898).

Art. 75.

"He (Governor) shall take care that the laws are faithfully executed, and he may on extraordinary occasions, convene the General Assembly at the seat of Government, or, if that should have become dangerous from an enemy or from an epidemic, at a different place. The power to legislate shall be limited to the objects specially enumerated in the proclamation convening such extraordinary session; therein the Governor shall also limit the time such session may continue; provided it shall not exceed thirty days. Any legislative action had after the time so limited, or as to objects not enumerated in said proclamation shall be null and void."

Maryland (1867).

Art. II, Sec. 16.

"The Governor shall convene the Legislature or the Senate alone, on extraordinary sessions; and whenever the presence of an enemy or from any other cause the seat of Government shall become an unsafe place for the meeting of the Legislature, he may direct their sessions to be held at some other convenient place."

Maine (1819).

Art. 5, Sec. 13.

"He (Governor) may on extraordinary occasions convene the Legislature; and in case of disagreement between the two houses with respect to the time of adjournment, adjourn them to such time as he shall think proper, not beyond the day of the next annual meeting; and if since the last adjournment, the place where the legislature were next to convene shall have become dangerous from an enemy or contagious sickness, may direct the session to be held at some other convenient place within the State."

Massachusetts.

Chap. II, Sec. 1, Art. IV.

"The Governor, with advice of counsel, shall have full power and authority during the session of the general court

(Legislature) to adjourn or prorogue the same to any time the two houses shall desire, and to dissolve the same on the day next preceding the last Wednesday in May; and, in recess of the said court, to prorogue the same from time to time, not exceeding ninety days in any one recess; and to call it together sooner than the time to which it may be adjourned or prorogued, if the welfare of the Commonwealth shall require the same; and in case of any infectious distemper prevailing in the place where the said court is next at any time to convene, or any other cause happening whereby danger may arise to the health or lives of the members from their attendance, he may direct the session to be held at some other, the most convenient place within the state."

Michigan (1850).

Art. V, Sec. 7.

"He (Governor) may convene the legislature on extraordinary occasions."

Minnesota (1857).

Art. V, Sec. 4.

"* * * He (Governor) may on extraordinary occasions convene both houses of the Legislature."

Mississippi (1890).

Art. 5, Sec. 121.

"The Governor shall have power to convene the legislature in extraordinary session whenever in his judgment the public interest requires it. Should the governor deem it necessary to convene the legislature, he shall do so by public proclamation, in which he shall state the subject and matters to be considered by the legislature when so convened, and the legislature when so convened as aforesaid, shall have no power to consider or act upon subjects or matters other than those designated in the proclamation of the governor, nor, by which the session is called, except impeachments and examination into the accounts of state officers. The legislature when so convened may also act on and consider such other matters as the Governor may in writing submit to them while in session. * * *."

Missouri (1865).

Art. V, Sec. 9.

"The Governor shall, from time to time, give to the General Assembly information relative to the state of the government, and shall recommend to its consideration such measures as he shall deem necessary and expedient. On extraordinary occasions he may convene the General Assembly by proclamation, wherein he shall state specifically each matter concerning which the action of that body is deemed necessary.

Montana (1889).

Art. VII, Sec. 11.

"He (Governor) may on extraordinary occasions convene the legislature by proclamation, stating the purposes for which it is convened, but when so convened it shall have no power to legislate on any subject other than those specified in the proclamation or which may be recommended by the Governor, but may provide for the expenses of the sessions and matters incidental thereto."

Nebraska (1875).

Art. W, Sec. 8.

"The Governor may, on extraordinary occasions, convene the legislature by proclamation, stating therein the purpose for which they are convened, and the legislature shall enter upon no business except that for which they were called together."

As amended to 1910, Art. V, Sec. 9.

Nevada (1864).

"The Governor may, on extraordinary occasions, convene the legislature by proclamation and shall state to both houses when organized, the purpose for which they have been convened and the legislature shall transact no legislative business except that for which they were especially convened, or such other legislative business as the Governor may bring to the attention of the legislature while in session."

New Hampshire (1902).

Part Second, Art. 49.

"The Governor with advice of counsel, shall have full power and authority, in recess of the general court, to prorogue the same from time to time, not exceeding ninety days in any one recess of said court, and during the sessions of said court to adjourn or prorogue it to any time the two houses may desire; and to call it together sooner than the time to which it may be adjourned or prorogued; if the welfare of the state should require the same."

New Jersey (1897).

Art. —, Sec. 6.

"* * * He (Governor) shall have power to convene the Legislature, or the Senate alone, whenever in his opinion public necessity requires it. * * *".

New Mexico (1910).

Sec. 32. *Special Sessions.*

"Special sessions of the Legislature may be called by the Governor, but no business shall be transacted except such as relates to the business specified in the proclamation."

North Carolina.

Art. III, Sec. 9.

"The Governor shall have power on extraordinary occasions, by and with the advice of the Council of State, to convene the General Assembly in extra session by his proclamation, stating therein the purpose or purposes for which they are thus convened."

North Dakota.

Art. 3, Sec. 75.

"* * * He (Governor) shall have power to convene the Legislative Assembly on extraordinary occasions. * * *".

Art. 2, Sec. 56.

"No regular session of the Legislative Assembly shall ex-

ceed sixty days except in the case of impeachment, but the first session of the Legislative Assembly may continue for a period of one hundred and twenty days."

Ohio (1910).

Art. II, Sec. 9.

"He (Governor) may on extraordinary occasions, convene the General Assembly by proclamation, and shall state to them, when assembled, the purposes for which they shall have been convened."

Oklahoma (1907).

Art. VI, Sec. —.

"The Governor shall have power to convene the Legislature or the Senate only, on extraordinary occasions. At extraordinary sessions no subject shall be acted upon except such as the Governor may recommend for consideration."

Oregon (1892).

Art. V, Sec. 12.

"He (Governor) may on extraordinary occasions convene the Legislative Assembly by proclamation, and shall state to both houses when assembled, the purpose for which they shall have been convened."

Pennsylvania.

Art. IV, Sec. 12.

"He (Governor) may on extraordinary occasions convene the General Assembly, and in case of disagreement between the two houses with respect to the time of adjournment, adjourn them to such time as he shall think proper, not exceeding four months. He shall have power to convene the Senate in extraordinary session by proclamation for the transaction of executive business."

Extra Sessions.

Pennsylvania.

Art. III, Sec. 25.

"When the General Assembly shall be convened in special session, there shall be no legislation upon subjects other than

those designated in the proclamation of the Governor calling such session."

South Dakota (1889).

Art. IV, Sec. 4.

"* * * He (Governor) shall have power to convene the Legislature on extraordinary occasions. * * * (no limitation on power)."

Rhode Island (1842).

Art. VII, Sec. 7.

"He (Governor) may on extraordinary occasions, convene the general assembly at any town or city in this state, at any time not provided by law." * * * (No restriction on powers.)

South Carolina (1875).

Art. IV, Sec. 16.

"He (Governor) may on extraordinary occasions convene the General Assembly in extra session. * * *" (No limitation on powers.)

Tennessee (1870).

"He (Governor) may, on extraordinary occasions, convene the General Assembly by proclamation in which he shall state specifically the purposes for which they are to convene, but they shall enter on no legislative business except that for which they were specifically called together."

Texas (1876).

Art. IV, Sec. 8.

"The Governor may on extraordinary occasions, convene the legislature at the seat of government, or at a different place in case that place should be in possession of the public enemy or in case of the prevalence of disease thereat. His proclamation should state specifically the purpose for which the legislature is convened."

Utah (1895).

Art. VII, Sec. 6.

"On extraordinary occasions the Governor may convene the Legislature by proclamation, in which shall be stated the purpose for which the legislature is to be convened, and it shall transact no legislative business except that for which it was especially convened, or such other legislative business as the Governor may call to its attention while in session."

Vermont.

Chap. 2, Section 11.

"* * * and they (Governor and Lieutenant-Governor) shall have power to call together the General Assembly when necessary, before the day to which they shall stand adjourned."

Virginia (1902).

Art. V, Sec. 77.

"* * * and (Governor) the General Assembly on application of two-thirds of the members of both houses thereof or when, in his opinion, the interests of the State require it."

Washington (1899).

Art. III, Sec. 7.

"He (Governor) may on extraordinary occasions, convene the legislature by proclamation in which shall be stated the purposes for which the legislature is convened."

West Virginia (1872).

Art. VII. Sec. 7.

"The Governor may on extraordinary occasions, convene at his own instance, the Legislature; but when so convened it shall enter upon no business except that stated in the proclamation by which it was called together."

Wisconsin.

Art. IV, Sec. 11 of Amendments 1881.

"The Legislature shall meet at the seat of government at

such times as shall be provided by law once in two years and no oftener, unless convened by governor in special session and whenever so convened, no business shall be transacted, except as shall be necessary to accomplish the special purposes for which it was convened."

WYOMING (1889).

Art. IV, Sec. 4.

" * * * He (Governor) shall have power to convene the Legislature on extraordinary occasions. * * * ".

The President.— Do you wish to reply?

Mr. Parker. — May it please the Court.

The President.— Do you hear distinctly what the counsel says here? I think you had better take this platform.

Mr. Parker.— I think I will have no difficulty in making them hear me.

The President.— The advantage of this place is that it is above the level of the floor.

Mr. Parker.— Were there any who had any difficulty in hearing me on Friday last? If so, please raise your hand. No one seems to have had.

The President.— If the court hears distinctly, why, that is all.

Mr. Parker.— Would it make any difference to the Presiding Judge?

The President.— Not the slightest; I can hear equally as well.

Mr. Parker.— May it please the court: We may congratulate ourselves upon the pleasure which has been ours of listening to a very interesting and learned address. But at the outset of the brief period that I expect to claim your attention I wish to say that the gentleman is entirely mistaken in the foundation for his peroration, which is, as he states it, that the counsel representing the Managers propose to attack the position taken by the counsel for the respondent on the ground that the question presented is

a technicality. We have made no such statement. We shall make no charge against them on the question of proprieties. Whether this demurrer should have been interposed, whether this motion should have been made, rested with them as lawyers, and we do not challenge it,— their right to make it — but we challenge its correctness. Nor shall we spend any time in considering that portion of his most eloquent address in which he refers to that time in the future when his imagination could discover a demagogue leading the mob in an attempt against the judiciary of this State. The judiciary of this State is too firmly rooted in the esteem, the respect, the confidence and the affection of the people and of the Bar of this State ever to make that possible. The propriety of that portion of his address we shall not consider. But it need not be doubted that while the judiciary is recruited from the best members of the profession as it has been for the last few years, and as God granting it will in the years to come, no member of the profession of this State, no member of the Bench of this State need fear the coming of that hour which his imagination enables him to discover — no one else.

But to pass now more directly to the points involved. After all, the argument of the learned counsel, as I understand it, in its last analysis, comes to this: that the Assembly had not the power of impeachment, because the legislature of which it constitutes one House was in extraordinary session. Well, if it be true that the Constitution forbids the Assembly when both branches are together in extraordinary session to impeach any official of this State, we should not be here urging this High Court that the Assembly, in taking the action which it did, was acting within the power which had been conferred upon it by the people of the State of New York, through the Constitution, its charter, for the protection of the liberties of the people.

If I understand the argument which has been addressed to you, it is based upon either a misapprehension of the nature of the impeachment proceedings itself, or it is based upon a confusion arising between the judicial power of the Assembly to impeach and the Legislative powers to enact legislation.

First, let us come to the grant of power, for it is to that grant of power that this High Court must look first to ascertain the

extent of the power conferred upon the Assembly in such cases. How does it read? "The Assembly shall have the power of impeachment." How? By a vote of a majority of the members elected. Is there any limitation suggested in that grant of power? It is as broad as human language can make it. Add to it anything you may think of that could possibly be added to it, and you will realize that you cannot strengthen it one iota. As a grant of power, it is absolute and complete, when we consider the history of impeachment proceedings back of the time when it was first incorporated into our Constitution. Is there anywhere any suggestion of time or place or occasion when the Assembly should act? Not at all. Is there anywhere else in this Constitution any provision relating to the subject of impeachment that suggests a limitation upon the power, upon the time, upon the occasion when action should take place? Is there to be found in the debates which have taken place upon the adoption of the first Constitution and in the adoption of the several Constitutions thereafter, any suggestion that there should be a time, ever, ever, during the year, when the balance of powers which our scheme of government provides for should not be perfect, one feature of that balance being the power of the Assembly to impeach those officials of the State who have been guilty of misconduct, either in office or outside of office, who are, by reason of misconduct, unfit longer to hold the office? Can you conceive for a moment that when this power was granted it was the intention to limit the exercise of that power to those days or weeks or months when the Legislature should be in regular session? There is no provision in this Constitution that the Assembly should consider the matter at all at regular session. It has been done, and because it has been done it has not been challenged. It is now done for the first time at an extraordinary session, and hence the challenge upon which ingenious legal minds have been at work for a long time to see if they could not construct an argument which could convince a High Court of Impeachment that when this grant of power was given to the Assembly of this State it was intended, although not expressed, that the power, after all, could only be exercised during the few months when the Legislature shall be in session, originally, perhaps, but a few weeks, and now but a few months,

and that for the rest of the year the corrupt official might do what he chose, and the people of this State would be powerless to remove him from his office.

My learned friend challenges the position which we have taken and which we take now although not necessary for our argument, but it is a part of it. He challenged the position which we take and which was asserted in the opinion of Mr. Justice Hasbrouck, that the Assembly may be self-convened.

We take that position, your Honors, and, briefly, let me present our view with reference to it.

Is there any better settled proposition that when there is a grant of power that there goes with it and as an incident to it all the lesser powers necessary to make the great grant effectual? Is it that the scheme and the spirit of the Constitution making of the United States, whether in the State or the Federal Government and here as find a great grant of power to one branch of the Legislature, to the Assembly, it shall have the power to do such, and what that power was and what it comprehended was perfectly well known, historically and legally, at the moment of its first incorporation into our Constitution? Does it undertake to do more? Does it undertake to prescribe when they shall meet and under what circumstances they shall meet? Not at all.

It gives the grant, and, having given the grant, there is carried with it, as an absolute necessity, all the underlying and the necessary steps and the power to execute all the underlying and necessary procedure to give it force and effect.

If it is conceived, for instance, that the time should come in the history of this State, when a Governor should be guilty of treason, would there be any question in your minds of the power of the Speaker of the Assembly, that it would be the duty of the Speaker of the Assembly and the Legislature, having adjourned, to invite the Assembly to the Capitol at Albany to consider this matter; and that when they should be gathered here in the city of Albany, all of the members of the Assembly being present, that it would be within their power to save the State from the great injury which might be wrought to it by this Governor because of incompetency or because he was guilty of treason to the people of this State — that they shall have the power to impeach him?

Let us assume another instance. Take a case that we have had for instance within the last few years. We have had a State officer who was a member of the Board of Trade, who had the making of contracts for the construction of roads throughout this State. We know that large appropriations are made. Suppose we had a time when one State official was a member of such a Board, dominating another official, and assume there were fifty millions of dollars of the people's money in the treasury ready to be expended in building roads, and suppose this official dominating the weaker member of the Board, and suppose together they could enter into a conspiracy for the letting of contracts for road building throughout this State for 25, 40 and 50 per cent. more than the actual cost of it, and that then there was a division of the profits resulting between the contractor and this State official. Suppose there was such a situation and the contracts were being made day by day and the Assembly should meet under circumstances which I have described?

Is there anyone who doubts that the High Court of Impeachment would sustain the action of the Assembly and would hold that it was the duty of the Assembly under those circumstances to protect the people of the State, and that the people were not so impotent under this provision of the Constitution but that there was help and relief to the people of the State?

The first and conclusive answer to the claim that an impeachment can only be instituted at a session, general or special, of the Legislature, is the fact that the Legislature has no power of impeachment at any session whatever; and this by a clear and absolute provision of the Constitution itself — that the Assembly, not the Legislature, shall have the power of impeachment.

Such is not only the provision of the Constitution, but consider for a moment the consequences of any other course. There are only two provisions for sessions of the Legislature: First, the general session on the first Wednesday in January of each year; and second, the provision that the Governor may convene the Legislature in extraordinary session, on which occasion no subject shall be acted upon except such as may be recommended by the Governor for consideration.

Suppose now that upon adjournment of the general session of the Legislature the Governor should become at once totally in-

competent or that he should have committed treason against the State or pursued any other course subversive of State Government. Is it to be supposed that a person capable of such conduct would convene the Assembly for the purpose of recommending his own impeachment; that he would or ever might do such a thing? It is contrary to the experience of mankind and to the plainest dictates of common sense.

It was never intended that the administration of the State Government should ever depend upon any such contingency as that. If so, then the State may be at any time subject not only to having its affairs administered by a person guilty of conduct, but it must suffer from the close of one session of the Legislature until the beginning of the next, or for substantially one-half of the Governor's term.

As I understood by the argument of my learned friend, he insisted that this is impossible. It is impossible for the Assembly to be convened alone and for it to convene itself, not because there is any provision in the Constitution preventing or covering it, but because it is necessary that both houses should be in session, or, in other words, that the Legislature must be in session, and he refers in his brief to the case in the United States Senate where was involved the impeachment of Secretary Belknap, and he quotes that as authority.

It is exactly true, as he states in his brief, that in that case the Senate did say, by resolution, that the proceeding should not proceed in the Senate while the House was not in session; but, in the report which was made by the counsel for the Managers, this appears:

> "The plan of the Managers on the part of the House has been to induce the Senate as a Court of Impeachment to allow Congress to adjourn and then sit as a Court to carry on the case; but there are two reasons against that which render it conclusive that the Senate will not do so. The first is, that many Senators doubt the power of the Senate to sit as a Court of Impeachment after the adjournment of Congress; the secondary and really practical answer is, that it will be found impossible to keep a quorum of the Court together after the adjournment of Congress."

Still another suggestion was made, which was that there could be no report to the Senate, assuming the Assembly should be self-convened; that it is not necessary to make a report to the Senate. Although that was done, Sections 118 and 119 provide that the impeachment may be presented to the President of the Senate and it is made the duty of the President of the Senate to summon the high Court of Impeachment so that it is not necessary at all that the Senate should be also.

I wish to take but very little time with that proposition.

Our contention is that the Assembly had the power to impeach; could self-convene itself and impeach; that it was not necessary that the Senate should be present; that the Legislature should be in session at all; and that in any great emergency which may arise, it will be done; that the Court of Impeachment should not at all, unless the situation was presented where it was compelled to, interfere with what is perfectly plain. There may come a time when the necessities of this State will demand that the Assembly get together, but while that is true, while that is all true, that course is not the position here.

Our position here is that we have the Assembly in session in connection with the Senate. The question which is to be presented here, is whether under the circumstances which brought them together, there is any restraint placed upon the Assembly by Article IV, Section 4 of the Constitution.

But, first, and before I come to that point which I wish to take up a few minutes later, I want you to go with me back to the beginning of the procedure in this State, the Impeachment procedure, to find out what was the purpose which they had in view.

I had occasion to say Friday that we had borrowed our procedure from England, with some modifications. Those modifications I think are worth examining in this connection in order to see precisely what the Constitution of this State undertakes to do. There, too, as here, the Lower House impeached. There the Upper House is the Court of Impeachment. Here the Upper House, with the Court of Appeals, is the Court of Impeachment. There every citizen of the Kingdom is impeachable in Parliament, whether he is an official or not; and the extent of the punishment which is to be meted out to him rests in the discretion

of that High Court of Impeachment. Here, no citizen is impeachable because he is a citizen. None are impeachable here but the officials; only certain officials may be impeached and, when impeached, there is no discretion save one left to the High Court of Impeachment. It cannot punish them in the sense in which they may be punished and are punished in England. The right to punish them is reserved, under the Constitution, to the ordinary procedure of indictment, trial and imprisonment.

All that a court of impeachment can do is to remove from office the official after his unfitness to longer hold office has been demonstrated, and to add to it a disqualification from holding office in the future. Now, the distinction is marked, as it seems to me. Our purpose is to protect the State. The punishment of the individual is left to the ordinary procedure of the courts. If he has committed crimes for which he may be impeached, he cannot be punished for them by this High Court of Impeachment, but this court is here to protect the people of the State against an unfit, an unworthy, an untrustworthy official whose presence in an official capacity is a menace to the State.

Starting with that proposition, then, we come now to the procedure, and what is it? We will take the situation first. Take the ordinary session of the Legislature; it must convene on the first Wednesday in January, by command of the Constitution. An extraordinary session of the Legislature comes into existence by command of the same Constitution when the Governor so wills it, and specifies the cause for bringing the extraordinary session. When the Legislature meets here it consists of two bodies, the Senate and House, each independent of the other. Each one may initiate bills. Each one may pass statutes affecting any subject which may be covered by statutes, upon any subject not prohibited by the Constitution. Either house may reject the action of the other house, and when finally they come together and agree upon a bill, so that it has passed both houses, there has resulted, so far as the legislative department of the government is concerned, legislation, and that legislation, while it may be vetoed by the Governor, may, notwithstanding his veto, become the law of the State, provided a two-thirds vote is cast in its favor.

Now, this represents the legislative work. Each house is inde-

pendent of each other; each determines the qualification of its members; each has the power to remove a Senator who has received a certificate from the Secretary of State that he is entitled to the seat; each selects its own officers, and in those respects, and in all respects, they act independently. But what they do together, what they do together in the way of passing legislation, is the act of the Legislature as a whole. Now, the Senate also has independent functions. It may confirm nominations which are sent to it for confirmation by the Governor, or reject them. That is independent work, and not a part of the legislative work. So, too, the Assembly has independent functions. The Assembly can come together and institute impeachment proceedings. It not only selects its own officers, appoints its own committees, but can institute impeachment proceedings. It is called the initiation of judicial action.

Through all of the impeachment cases to which my friend has referred it is treated always as a judicial proceeding and a judicial act on the part of the Legislature representing the people of the State of New York. After they have instituted these proceedings, then the High Court of Impeachment comes into existence, comes in by the provisions of the Constitution. Into that Court go all of the Senators of the State of New York, not by virtue,— not as a part of the Senate, but because the Court of Impeachment is by the Constitution made to consist of the Senators of the State of New York and the Judges of the Court of Appeals, or a majority of each. Their salaries are fixed at $1,500 a year for the Senators and for the Assembly, and yet when they come into this Court of Impeachment, they are permitted to have $10 a day in addition by the Constitution for the judicial work which they have undertaken.

Now, there isn't any question at all, as I have said before, there isn't any question of power of the Assembly to act in that independently as it does when connected with the regular meeting of the Legislature. How can there be any question, unless it is to be found in the mandate of the Constitution, as to their right to act at an extraordinary session of the Legislature? There is no difference in principle. There is no reason why, in extraordinary session of the Legislature, the Assembly, should not im-

peach just as well as at the regular session. There is not any provision of the Constitution which in terms provides that it may impeach in either the regular or the extraordinary session. It is sufficient, so far as the Constitution is concerned, that it grants to them the power to impeach. That power being granted, the Assembly may exercise it when and where it chooses, unless it be true that Article IV of Section 4 of the Constitution prohibits it.

Now, how can that be urged? Article IV provides that

> "The Governor shall have power to convene the Legislature or the Senate only, on extraordinary occasions. At extraordinary sessions, no subject shall be acted upon, except such as the Governor may recommend for consideration."

What is it that the Governor has power to convene? The Legislature. What is it then, that the next clause restrains? The Legislature. For at extraordinary sessions no subject shall be acted upon except such as the Governor may recommend for consideration. But what are the subjects? Necessarily, legislative subjects. It must be so, because the Legislature can only consider legislative subjects. The Assembly may consider those things which belong to it alone. The Senate may consider the confirmation of appointees of the Governor and the particular things which the Senate may do alone, but as to all legislative matters, in order that it may constitute legislation, it is necessary that the legislature, that is, that both branches shall concur, in order that there may be legislation. Therefore, this provision of the Constitution, two Articles away from the Constitution which confers the grant of power, one being Section 13 of Article VI, and the other Section 4 of Article IV, which shows that it could not have been the purpose in the minds of the framers to cut down the power of impeachment. If that had been the purpose, it is perfectly clear that it would have been provided in the great grant of power, the Assembly shall have power to impeach by a majority vote of the members elected, except that it shall act only at a regular session. That is a provision that would have been put in.

Now, you must necessarily reach the conclusion that the purpose here in using this language, that the purpose was to prevent

action by impeachment at any extraordinary session. Why must you reach it? You must reach it because the great grant of power had been given in another provision, and so they were treating of an entirely different subject, and the logical and ordinary rules of construction require these two clauses to be so construed as that it shall be held that this restriction was upon the Legislature itself, and only the Legislature, and had to do only with legislative duties. The history of that subject is that as disclosed in the debates in the Constitutional Convention. The purpose of it was to enable the Governor, on extraordinary occasions, to convene the Legislature for the purpose of passing some act or considering some subject which he deemed of vital interest to the State, of such great interest as that the Legislature ought to be brought together. And yet it was deemed best that the Legislature should not on such occasions take up other subjects of legislation, legislation being the purpose of bringing them together in certain emergencies at great expense to the State, and so that it might not continue in session much longer than was deemed for the benefit of the public interest.

So it was provided in the Constitution that when this Legislature which the Governor was given the power to convene in extraordinary session, and could do it himself only on extraordinary occasions, that this Legislature should not have the power to act upon any other subject. What is the Legislature? It is not the Assembly; it is not the Senate; it is both together, and when the Legislature was enjoined from considering any other subjects it was not the purpose to enjoin the Assembly from performing its duties, not the purpose to enjoin the Senate from confirming any appointments of the Governor that might happen to remain over, or any appointment that might be tendered to it. The language then should be so construed, your Honors, as that it shall be given the effect according to the purpose which the framers of the Constitution had in mind, so that it shall work out their scheme, which was to prevent the Legislature from considering subjects of legislation other than those which the Governor should present to it, and not so as to prevent the Assembly from performing their functions which had been enjoined upon it as an Assembly,

to wit, the power of impeachment. That power should be in possession now, and hereafter, to be exercised in extraordinary session. It will not do for us to assume here in the disposition of this question, that the time ever will come when there will be a Governor who would convene the Legislature in extraordinary session, and would recommend the Assembly that in the public interest they proceed to impeach him. And there should be no decision by this High Court of this important question, except along the line of the natural and reasonable construction which these two provisions of the Constitution require. They can stand together, side by side, the one giving the grant of the power of impeachment to the Assembly, which should continue 365 days in the year; the other giving the Governor power to assemble the Legislature in session for the purpose of considering legislation; or the Senate which he may assemble only for the purpose of considering legislation. Those two provisions should stand, and should be enforcible side by side. That is the nature, I contend, the natural and ordinary meaning of those two provisions. The construction which all our experience with the subject of impeachment and of legislation requires us to put upon these two provisions standing together is that the Governor may, whenever he deems the occasion one of such moment as to be within the spirit of the Constitution, he may summon the Legislature together to act upon it, and when he does, they shall act upon no other legislative subject; but that these two absolutely independent houses, each having powers of its own independent of the other, that they shall not be interfered with in the performance of their separate duties; such, for instance, as impeachment by the Assembly.

Now, let me suggest to this Court that the argument of my learned friend comes in the end to this: That there can be nothing done that the Assembly, although it may not try to pass any legislation which the Governor has not recommended, is helpless, is absolutely impotent to do anything, to elect a speaker, if the speaker at the regular session has died meantime, powerless to elect one; if someone has resigned from the Legislature and left the chairmanship of committees vacant, that this Assembly would

be absolutely impotent to fill the vacancies and to put itself into working condition.

Such a construction as that would be strained and unnatural, for this Article IV, Subdivision 4, was not dealing with impeachment, it was dealing with legislation. The subject was legislation; the bringing together of the legislators was for legislative purposes only and through the provision that at extraordinary sessions no subject shall be acted upon except such as the Governor may recommend; it means that no subject shall be acted upon by the legislature, considered as an entirety, not that the individual houses may not perform the functions which otherwise belong to them, and which another provision of the statute has enjoined upon them.

Mr. Brackett.— With the permission of the Court; my associates have suggested that I should give some additional matters that have come under my preparation. We are keeping ourselves very well within the time which counsel of the other side have consumed.

The President.— Very well; you will have full opportunity to address the court.

Mr. Brackett.— With the permission of the Court: The defendant stands properly impeached by the Assembly. There is no limitation in the Constitution as to the exercise of this power of impeachment, nor is there any direction of procedure in such cases. It is urged that impeachment may not be had at an extraordinary session of the legislature. There are at least two complete answers to this contention. In the first place, this resolution, these articles of impeachment, were not adopted at an extraordinary session or any session of the legislature. They were adopted at a meeting of the Assembly that happened to be held during a time when there was an extraordinary session of the legislature, as it could have been held at any time, whether the legislature was in session or not. Second, the Assembly may adopt impeachment proceedings at an extraordinary session of the legislature. There is no limitation in the Constitution against it doing so. Under the Constitution I now quote:

> "The legislative powers of the State shall be vested in the Senate and Assembly."

I call your attention that the legislative powers of the state are vested in the Senate and Assembly; and the legislature is directed to assemble on the first Wednesday in January of each year. In addition to this, the regular session, when both houses are required to come together, when called by notice of any kind, the Governor " shall have power to convene the legislature or the senate only on extraordinary occasions. At extraordinary sessions no subject shall be acted upon except such as the Governor may recommend for consideration."

There is no authority anywhere for the Governor to convene the Assembly alone, and it stands here, if the presiding judge and members of the Court please, that upon the contention of the learned counsel for the defendant there is absolutely no time on earth when there can be any impeachment at any moment during the year. The Legislature being in session does not mean that the Assembly is in session, as a separate body. It is there as a constituent part of the legislation, and if the contention is true that the counsel for the defendant here presses, it stands that although there is conferred in the most general terms the power of impeachment as broad as the all-encasing air it still stands that it never can be exercised because there is no way in the wide world under the sunshine, that the Assembly can get itself together. In the present occasion we need not be much troubled with the question as to how the Assembly may convene for the purpose of impeachment. They got together. They were together. They got together. While it is conceivable that a governor may be of so high a mind and so conscious of his own rectitude and so sure of his position, and so certain that he has done nothing worthy of impeachment or criticism, that he would issue a call convening the Assembly and recommend the consideration of the subject of impeachment, and then join battle with them in an orderly way as to whether he was guilty of anything impeachable, perhaps that is too much to require or hope for from one of our poor humanity, perhaps too much to expect that the average man or the average Governor would do so. It is rather, probably, to be expected that he distinctly would not do so, but would shield himself behind what is a technicality, that he cannot be approached in the manner and at the time that the proceedings were instituted if at a special session.

I cannot at this moment, with the permission of the Court, fail to recall the remark of Charles Sumner, upon the trial of President Johnson. Charles Sumner, who had stood for years as the political incarnate, political conscience of Massachusetts, when all the questions with respect to form and procedure and technical objections that were made, he burst out with the one question that should be considered here, as he said it should be considered there. He said, "Great God, is there any question possible except is this man guilty?" But it is well within their power and their right to invoke any and every technicality, and therefore we have a right to expect that the Governor would not invoke the Legislature in special session, and here to attend, recommend or consider or recommend for consideration, the matter of impeachment; and he has claimed to this time that he cannot be impeached, that he was not properly impeached, and he cannot be here convicted because he did not recommend to the Legislature in special session the matter of his own impeachment.

Now, one proper way of determining the intention of the Constitution or constitutional provision is to trace the several contentions with respect to it to their consequences, to their ultimate consequences, that its right to consider the evil which would result from either alternative, presented in the discussion of the learned counsel on the side of the defendant and that which is maintained on behalf of the managers. This principle is thoroughly settled, and those members of the court who are all the time examining and hearing discussed legal questions recognize it as a thoroughly settled proposition. The doctrine is fully elaborated in an opinion by Judge Haight as the 188th New York, and while in that case it shows that it was a dissenting opinion on the point, it still stands that the doctrine that he enunciated there is well settled, and has met the approval of the courts over and over again. Another proposition upon which we may plant our feet with great surety is that it will not be assumed that in the adoption of the Constitution the people intended to reach either anarchy or disorder or public mischief of any kind. The direct contrary was intended to be attained; order any such provisions and restrictions as would surely make for order — I use the language in this case, announcing People v. The Board, 155 N. Y.: let

us see, then, in the light of these principles of legal hermeneutics, let us see what would be the consequence of the inability of the Assembly to convene under certain circumstances, and I doubt whether I can add anything to what has been so ably said by Judge Parker, but I approach it from perhaps a very little different angle of vision, and in a court composed of so many members as this, perhaps it is not improper that such different angles should be presented. Assume that soon after the adjournment of the regular session a Governor should so far demean himself as to commit a series of acts flagrantly and admittedly violative of his duty — I do not need to suppose any particular offense — I want to bring to the attention of the court the proposition that a Governor has so far demeaned himself as to flagrantly — that he has flagrantly and admittedly violated the duties of his office, and has violated the Constitution, you may call it that he has issued pardons to every criminal in the penal institutions of the State, that he has ordered out the militia, and has brought into custody the persons of every member of the Court of Appeals, including the presiding judge, whose person is at this moment as thoroughly sacred in the minds of the people of this State as any man ever has been in our history. I don't care what. I don't need to specify the crime — any of these things. Assume he takes the militia and marches them and makes war on our neighbor, Massachusetts — whatever it may be, so it is admittedly and flagrantly a violation of the Constitution, committed on the first day of April, 1913, would the people of the State be compelled to sit helplessly by during the months until the first Wednesday in January following, until the Legislature can get together in regular session under the direction of the Constitution, before staying his wicked acts? Oh, my friend says in his argument, it don't amount to much, it is only a few months anyway. Can any sane man who has any knowledge of State affairs, and who loves the orderly administration of the State government, consider for a single moment with complacency a claim of that kind. Is it true that seven or eight months of the year a wild man in any office, particularly in the office of Governor, that it is not of any consequence whether he is stayed during that time or not? Does it comport with the genius of our institutions? Is it true that

there is meant to be a single moment of time, let alone eight months of time, when any official of the State is not deemed to be somewhere controlled and checked by some other department of the State? Where the Legislature, in its passage of the laws, is controlled and checked and its every act is subject to scrutiny and to be declared absolutely null and void by the high court which your Honor presides over? In terms the court which your Honor presides over is liable, in case it runs to any wrong which reaches the dignity of an impeachable offense, to have charges preferred against you on behalf of the nearest representatives of the people there in the State, the Assembly. The Executive is liable and the Lieutenant-Governor is liable to impeachment. Every State officer is liable to removal by the Governor. There is not a moment of time, and your Honor, with all the tremendous learning which you have with respect to our laws and our system, with your tremendous knowledge of the structure and the genius of our institutions, I do not believe can find anywhere any moment of time when the system does not contemplate that any public official should stand unrestrained a single moment of his official life.

I think it was said that unrestrained power makes a wild beast of a man, no matter how benevolent his previous intentions, and it was with that in mind that the Wise Fathers who formulated the Constitutional system under which with some changes we have lived in contentment and peace and under which we have laid down and slept the sound sleep of free men, it was with that in mind that the checks and the balances, that one department should control and balance another, that there should be no single public official or servant who should not be subject to surveillance and subject to reproof and subject to removal at any moment of time; and it was with that in mind that they formulated the magnificent document which we call the Constitution.

Let each one reason out for himself. It is enough to say that the Chief Executive of the State could do acts that might endanger the vital interests of the State and might bankrupt and might ruin it. Such a juncture would in the absence of constitutional direction or intention require that the Assembly should come together upon any call. I do not limit it that it should be upon the call of the

Speaker. I do not limit it that it must be upon the call of the Clerk. The Assembly in its solemn power of impeachment may get together upon any call and in any place and in any way. It has that right and it would be its most sacred duty to exercise that right in case the situation existed as I have suggested to you.

Why, do the members of this Court, and I am sure that those members whose habit is to consider legal and constitutional questions and study legal and constitutional history, to whom justice is a habit, do you recall the time when the Clerk of the House of Representatives of the United States declined to call the roll of that body so as to enable it to organize, and John Adams, who had been President of the United States but who in his service in the House was doing greater public service than in all his long and useful life, when he announced that if the Clerk would not call the roll that he himself would call it? The people of the United States applauded and approved and said Amen to his declaration and the House organized.

In the very room where we stand now, where this Court sits now, Charles D. Saxton, a member of the Senate, the leader of the majority, and the Lieutenant Governor being of an opposite political faith, when some question was up here the Lieutenant Governor directed the Clerk not to call the roll and the Clerk did not call the roll. The question could not be put and an absolute standstill was at hand. Charles D. Saxton, rising in his place in this very room, called the roll himself; the action was taken and it was upheld by the Senate, as it was upheld by the overwhelming sentiment of the people of the State.

The question how to get the Assembly together, however, if its assemblage is necessary at all, and for the purposes of this argument I concede it is necessary to get together, is not here. Its members were together. Its members were on the other side of this building in the hall provided by the State for their accommodation. They were together.

Now I shall not stop on the argument — there is argument that could be had, that the proposition at which my friend found time to turn and jest is correct — that if, under the juncture I have mentioned, 76 members of the Legislature should sign articles of

impeachment or resolutions of impeachment, much of argument could be had that those powers necessarily exercised would be valid, because a vote does not mean an assemblage called together and a viva voce expression. Lexicographers define an expression as any expression of will; and the expression of will is as thoroughly defined by a roll-call on the articles of impeachment by a majority as would the getting together and a viva voce vote; but I will pass that because it is not necessary that that should be done or that we should press that proposition.

We may pass by the manner in which the Assembly shall convene, for it was convened. The members were physically together, and we come only to the question that needs to be considered in this connection, whether being thus together, not being in session, but being thus together, it may institute proceedings to impeach the Governor, such impeachment proceedings not having been in terms included in the subjects enumerated by the Governor in calling the extraordinary session together.

The language vesting the power of legislation in the Senate and Assembly is general and comprehensive, whereas the Federal Constitution is a grant of certain specified powers, reserving all others not named to the people themselves. By this grant in the Constitution in this State all power not reserved is vested in the — Legislative power is vested in the Senate and in the Assembly. But in addition to this legislative power, the Assembly is vested by the Constitution with the power of impeachment, and this is not a legislative power. It is a judicial power. My friend, if he did not challenge that, slurred it over with the evident intention on his part of rather having it a doubtful proposition.

In the case of People ex rel. McDonald v. Keeler, which your Honor will recall, was a case where McDonald who was committed for a contempt of the Assembly —

The President.— Speak to the other side.

Mr. Brackett.— I am so used to talking to your Honor —

The President.— There are fifty-nine or sixty of the Court on the other side of the vacant space.

Mr. Brackett.— That being the case, it being a habeas corpus brought up the body of McDonald, who was committed by the

order of the Assembly, and he came to the Court of Appeals, and among other things, because it is a very long opinion I shall read only an extract — written by that master of the law, Charles A. Rapallo, in speaking of the division of the powers of the Legislature, he says:

> "But notwithstanding this general division of powers, legislative in the Legislature, the judicial in the judiciary and the executive in the executive, certain powers in their nature judicial are by the express terms of the Constitution vested in the Legislature."

The power of impeachment is vested in the Assembly. Now, without exactly saying as an affirmative fact that the power of impeachment is judicial, by necessary inference from the language that he used he does say that it is so.

Now, the Assembly having in addition to this legislative power — the legislative which rests in the two Houses — has this power of impeachment which rests in the Assembly alone, the Assembly having no separate power of legislation whatever. And the Assembly having impeached, the Senate, not in any legislative capacity — and that differentiation differentiates the California case and the Florida case that my friend has cited — the Assembly, not in any legislative — the Assembly having impeached, the Senate not in any legislative capacity, not exercising its power of legislation, but by virtue of a grant separate from that legislative power sits with the Court of Appeals in a strictly judicial capacity as a Court of Impeachment, not as a Senate at all, a court the members of which are required to take an oath other than and additional to the one taken as Judge of the Court of Appeals and Senators, that they will truly and impartially try the impeachment.

The learned counsel who preceded me had adverted to the fact that they received compensation more than the $1,500 which is given to them as legislators, which demonstrates, if anything further is necessary to demonstrate that, why the members of the Senate do not sit in any legislative capacity, why the members of the Court of Appeals do not sit as Judges of the Court of Appeals but altogether they sit in a Court of Impeachment in a strictly judicial capacity. Impeachment by the Assembly then,

not being a legislative act, and its trial by the Court of Appeals and the Senate not being a legislative act, but both being judicial, this inhibition of Article IV, Section 4, "at extraordinary sessions," etc., does not apply to nor prevent impeachment proceedings being initiated by the Assembly at the time of an extraordinary session of the Legislature called by the Governor even if such call was for specified purposes and did not include impeachment.

Now, this provision of the Constitution defining the duties — is in the section defining the duties and powers of the Governor. It is entirely different and apart from the grant of legislative power. Article VI is a judicial article of the Constitution; Article III, the legislative. But this grant is in Article IV, Section 4, and after prescribing that the Governor shall be Commander-in-Chief of the military and naval forces of the State, it says:

> "He shall have power to convene the legislature or the Senate only on extraordinary occasions; and at extraordinary occasions no subject shall be acted upon except such as the Governor may recommend for consideration."

Now, unless the limitation is found in this language it is found nowhere. There is elsewhere in the whole Constitution no word that can be held to limit anything concerning the general grant of the power of impeachment to the Assembly. No subject shall be acted upon except such as the Governor may recommend for consideration. Recommend to whom? Of necessity to the bodies whom he may thus call together on the provisions of the first of the two sentences; that is, the Legislature or the Senate only. The Assembly not being mentioned as one that may be convened in extraordinary session except as a part of the Legislature. Recommend them to whom? Recommend to the Legislature, if that is the body that has been called together, or to the Senate if it has been called together alone. Acted upon by whom? Of necessity the same bodies mentioned in the antecedent sentence, the Legislature if both bodies are assembled, or the Senate if convened alone. No other result can be reached from any analysis of the provision contained in the two sentences under scrutiny.

Of course, your Honors sitting in the court are familiar with

the rule that a relative word relates to the next antecedent. That is a rule of construction. That is a rule that is studied from the time we first commenced to study grammar. But it has been expressly and explicitly shown in the language which I have quoted.

Now, the language of the Constitution imperatively demands construction. It does not literally mean that no member can act upon, for example, his own affairs while attending an extraordinary session. It must be construed to mean that it is a public business that cannot be acted upon. It is then necessary to inquire what public business may not be acted upon. Answering this, it will not do to say that no public business, because there is certain public business that may surely without challenge be done at extraordinary sessions, and business that is not recommended by the Governor.

Now, let us suppose, to illustrate that, the legislature being convened in extraordinary session, the Assembly finds that it has been deprived by death or resignation of its Speaker, its Clerk or any officer whom it is empowered to elect. I do not now speak of any officer within the power of appointment of the Speaker, like a chairman of a committee. I am speaking and speaking only of those officers of the Assembly which the body itself is required to elect.

Now, does my friend gravely contend that the Assembly, being together, and finding that its Speaker is dead or has resigned, cannot, without the gracious favor of the Governor, contained in a message to it, elect the successor of the Clerk or the successor of the Speaker? If he does—

Mr. Marshall.— (Interrupting) I do not.

Mr. Brackett.— I am glad he did not, because I had a couple of cases on the subject.

Mr. Marshall.— It is simply a matter of the organization of the House.

Mr. Brackett.— I am coming to procedure and organization presently, my brother.

The President.— Continue your address.

Mr. Brackett.— Precisely such an occasion arose when Mr. Speaker Henry J. Raymond was so sick that he was unable to come to the extraordinary session of the Assembly, the Assembly being called together for the specific purpose as I recall of passing the appropriation bills, but it does not matter what, because the power of electing the Speaker or the successor of the Speaker was not questioned. Thereupon the Assembly deeming it unnecessary to inquire of any human being whether they could elect a successor to Mr. Speaker Henry J. Raymond elected Mr. Barnum as the Speaker pro tempore for the purpose of presiding over the Assembly until Mr. Speaker Raymond should be present.

In the year 1905, in this very room, when the Legislature was called together by Governor Higgins for the single and sole purpose of considering the matter of the investigation into the acts of Justice Hooker, at that session the first thing that was done was that James S. Whipple, the Clerk of the Senate, resigned. Thereupon Lafayette B. Gleason was elected to the position of Clerk, and that without recommendation on the part of the Governor at all.

Now, other illustrations will occur to anybody at all familiar with legislative life.

If the Assembly desired to change its standing committees at such special session, there can be no doubt that it could do so without any recommendation from the Governor. If it desired to create a new standing committee or in any way amend its rules it could do the same. To sum it up, there are many things that the Assembly can do alone that does not involve legislation that must be passed on by both Houses, which it can do at any time that it is together, without any recommendation from the Governor, and in spite of any recommendation from the Governor.

There is, then, some public business that the Assembly, as an Assembly, in its own proper body may do during an extraordinary session, without a recommendation from the Governor. And this illustrates and enforces and clinches the proposition which I made before that it is necessary to construe this language of the Constitution.

And where in the construction is the dividing line between what it may do and what it may not do, for it is necessary for

us to fix that line somewhere. It is not fixed by the language of the Constitution itself. It must be done by construction, and there is no other line of demarcation known to man, and the ingenuity of all this great court can find no other line than the one drawn between legislative business as such and the business strictly of the Assembly, as a separate body; and every one of us can search in vain for any other logical or natural line of demarcation.

Whatever shall be said as to whether impeachment by the Assembly is a judicial or political act, no one can ever claim it is a legislative one. Lexicographers' definitions as to what are legislative are entirely conclusive on the subject. Not being a legislative act it is not prohibited at any time the Assembly takes up the subject.

It is the right of the Governor to specify what legislation shall be considered at an extraordinary session. The Constitution so prescribes. The Legislature at its regular session must complete such general legislation as it cares to initiate. Thereafter, the Governor alone shall prescribe what legislation shall be considered at any extraordinary session, but this limitation is only as to legislation. The word "subject" in this limitation, section 4, Art. IV,— the thing that may not be acted upon unless — means "subject of legislation," and can mean nothing else; and, so meaning, there is no constitutional restriction upon impeachment proceedings at a special session, if they are needed in the protection of the State or its dignity.

The article in which this clause is placed is the one granting powers to the Governor, as I said before. The language and its context make this a natural and logical rendering of the provision, and it is complete justification for instituting and completing impeachment proceedings, if the facts called to the attention of the Assembly are deemed to require such action.

In the recent application made by some one on behalf of the Governor,— although afterwards disavowed — which involved the power of this defendant to issue a pardon after articles of impeachment had been delivered to the Senate, Mr. Hasbrouck, who as a practitioner at the bar had large experience in the public service, having been an Assemblyman, and later First

Deputy Attorney-General, held that the Assembly had the power of impeachment at all times; that it was not shorn of such power because the Governor had called an extraordinary session of the Legislature; that from the time the articles were signed, the official functions of the defendant were suspended and devolved upon the Lieutenant-Governor, and that after the presentment of such articles the defendant could not issue a pardon or do any other act as Governor. This opinion of the Justice is powerful and convincing.

There is another ground which was elaborated by the learned Attorney-General of the State, and which requires but a single step further in order to completely and entirely justify the power of impeachment at a special session of the Legislature, and that is this:

The Governor in calling the Legislature together, used this language — I won't say this was in the proclamation or the message, because it is not of consequence. It is in one —

> "Let me, therefore, renew my former recommendations, reiterate all that I have previously said, and again sincerely and earnestly urge the Legislature to pass a Direct Primary Bill that shall provide," etc.

Now the opinion of the Attorney-General was rendered to the effect that the question of amending the Election Law having been submitted to the Legislature, that, therefore, it was competent for the Assembly and the Senate to add to the powers of a joint committee then before in existence by giving it power to investigate frauds upon the Election Law committed at the last election.

This construction is upheld by the language of the Court in People v. Keeler, referred to before, where Judge Rapallo says:

> "In many cases it may be indispensable to intelligent and effectual legislation to ascertain the facts which are claimed to give rise to the necessity for such legislation and the remedy required."

So, when the gubernatorial recommendation mentioned the amendment of the Election Law as a thing to be considered at the extraordinary session, it gave to that body the right to legislate

on the subject. To legislate intelligently and effectually the two Houses had the right, and very likely it was their duty, to investigate. To investigate, a committee was the only practicable means. When, therefore, the Frawley Committee, already being in existence for some purpose, the Legislature invested it with the power to investigate as to the Election Law, it was proceeding strictly within the lines of the message calling the Legislature together.

The case of the People v. Keeler, already cited, holds in the broadest terms the right of a legislative committee to investigate for legislative purposes, and in pursuing such purpose, to compel the attendance of witnesses and to punish for contempt. The Supreme Court recognized the same power if the resolution for the investigation avowed a purpose to impeach a secretary. It was the case of Kilbourn against Thompson, and an action for false imprisonment, they having arrested Kilbourn, who was arrested at a witness in contempt, Thompson being the sergeant-at-arms, and the Court held they would have a right to investigate if the preamble of the resolution avowed that the purpose was the impeachment of a secretary, and to the same effect is the case of the People v. Sharp and the case of People v. Milliken.

Having the power to legislate in the way of amendment to the Election Law, and having thus the power to investigate for the purpose of enabling it to legislate intelligently in the course of its investigation the joint committee uncovers a series of crimes committed by the Executive while a candidate and Governor-elect, the most unique in detail ever spread upon record.

Having properly discovered these crimes by this investigation authorized at the extraordinary session, it was the plain duty, as it was the right, of the Assembly, to, at once, institute impeachment proceedings against the guilty official. If impeachment proceedings are not legislative in their character, then they are not prohibited at the extraordinary session.

If, by any circuity of reasoning they are held legislative proceedings, then they are strictly within the gubernatorial power of recommendation to the Legislature before quoted, as devising methods effectually to prevent fraud on the Election Law.

I want to submit, not as a matter of merriment, but in all sin-

cerity, and in all solemnity, that there is no proceeding taken in this State in a quarter of a century or more that will more tend to prevent fraud upon the Election Laws than this impeachment being prosecuted here to-day.

It is argued further by the learned counsel that it must be shown that notice was sent to every member of the Assembly that the impeachment of the Governor was to be considered before the proceedings were taken up in that body, in order to be regularly here, and that the question may be here examined. I deny the claim.

Aside from the question of the jurisdiction of the Assembly, the resolution of impeachment and the circumstances under which it was adopted may not be inquired into here. The resolution is here. The adoption in the Assembly is attested by the journal of that body. Its receipt by the Senate, as well as the receipt of the Articles of Impeachment adopted by the Assembly, are attested by the Senate Journal.

The journals are final and conclusive evidence of the facts stated. The court cannot go back of them to examine into the circumstances nor the motive of the adoption of either of them. The proceedings are duly proven by the respective journals, the last word on the subject that may be considered. The certificate of the presiding officer of the Assembly, that the resolution of impeachment was duly passed, and that the Articles of Impeachment were duly adopted, on file with the Clerk of the Senate here, are before this Court and proper in form; and they are conclusive evidence of the adoption of the Articles and of the resolution, and this Court may not go behind such certificate if it is regular in form; and it is regular in form.

If there were any defects in the certificate to the articles, or to the resolution of impeachment, then it would be permissible to the Court to go to the Journal of the Assembly, but inasmuch as that journal shows the proper adoption of the resolution of impeachment, and also the adoption of the Articles of Impeachment, precisely as does the certificate, the same result obtains.

The ultimate result to which this Court can go is to the Assembly Journal, which is conclusive on the Assembly. That is the case of the People against the Commissioners, in 34 N. Y., and Rumsey against the Railroad, in 130 N. Y.

There has been much said on the part of the defendant as to the jurisdiction of the Assembly to adopt either impeachment or the articles thereof at an extraordinary session of the legislature, but we have before seen the grant in the broadest terms of the jurisdiction, and the jurisdiction being granted by the language that the Assembly shall have the power to impeach by a vote of the majority of all the members elected, the jurisdiction of treating the subject matter of impeachment is then plenary. It is granted in the utmost to the Assembly. It there rests and unless this jurisdiction is limited by some other provision of the Constitution, the discussion is over.

Given this fact of jurisdiction of the subject matter, there being no question of the jurisdiction of the defendant's person, unless there is elsewhere in the instrument some limitation in the Constitution itself, some limitation of some rules of procedure, and aside from jurisdiction all else is procedure, the power of impeachment is unlimited, to be exercised by the Assembly in its own way. The way that the body shall get together, the place where, or the time when, the notice that is required to be given of the meeting, if any, the rules under which it shall work -- all these things are procedure, pure and simple, and nothing else.

And of all these the Assembly is the sole and only judge, for by article III, section 10, "each house shall determine the rules of its own proceedings, and be the judge of the elections, returns and qualifications of its own members; shall choose its own officers." The jurisdiction is there by the broadest grant in the language before stated.

Can this court go into the procedure or the motives by which or for which the articles were adopted? The Supreme Court is given jurisdiction by section 1 of the same article, in no broader terms than is this power of impeachment given to the Assembly. "The Supreme Court is continued with general jurisdiction in law and in equity."

Suppose there had been no rules of procedure prescribed to the Legislature or authority to the court to prescribe rules of procedure, and there had been no Code of Civil Procedure or Criminal Procedure, would it still be said that the Supreme Court would not have power to go ahead under this general branch and organize itself in its own way, and exercise its jurisdiction?

The power to impeach in the Assembly is just as broad as the grant of general jurisdiction, both in law and in equity, given to the Supreme Court.

There have been provided for the Assembly neither statute directions, nor rules, as to its procedure in the adoption of the resolution of impeachment, nor the proceedings prior thereto. It may and must proceed in its own way under this broad grant of power. Its certificate is here that it has proceeded, and that the result is the resolution of impeachment and the articles. As we have seen, this certificate is the best and highest evidence of the result of the Assembly's work, back of which we cannot go.

When it comes, then, that there is here presented a challenge of the jurisdiction of the Assembly to adopt a resolution, or articles of impeachment, at an extraordinary session of the Legislature, that challenge is met by profert of the grant of power in the Constitution; and nothing that can be said outside of the Constitution can lessen the completeness of the answer to such challenge of power.

Having the power, the Assembly has acted by some method of procedure. Here is its certified result. Its jurisdiction is successfully defended by reading its grant of power; its procedure, or the result of its procedure, we may not challenge.

In the presentation of an argument in a proceeding before Mr. Justice Hasbrouck, to which I have before adverted, the very learned, venerable Judge and General Benjamin F. Tracy, conceded and not only conceded, but claimed and argued, that the Assembly has this power of impeachment, but to be exercised only at a regular session.

The argument concedes too much. If the Assembly has the power of impeachment one moment of time in all the year, it has it and may exercise it at any moment in all the year, unless there is somewhere else in the Constitution a limitation. The fact that the Governor has called an extraordinary session of the Legislature, or of the Senate, does not and cannot take this jurisdiction away. There is no preference in the Constitution of one time over another. Unless a Constitution itself forbids the exercise of such power of impeachment during some particular portion of the time, unless it has formulated some rules of procedure, or

authorized some person or body, other than the Assembly, to do so, then it rests that at any time and at all times, under such rules of procedure as it sees fit to use, the Assembly may proceed to the exercise of its unlimited power of impeachment granted by Section 13 of Article VI, the jurisdiction to impeach being always in the Assembly, whether it be in general session or extraordinary session.

That being so, every member of the Legislature is in law bound to know that the subject might come up at any time when the members of the Legislature were together.

In extraordinary sessions, to the subjects recommended by the Governor, the law adds always, in effect, these words the subject of the impeachment of any officer. The law adds them because by the Constitution the power to impeach is always there, at regular and at extraordinary sessions, and is liable to be exercised at any time when the Assembly is convened.

If this be so, no notice was required to be given to any member that the subject of impeachment would be taken up, any more than notice is required that some particular matter of legislation will be taken up at any regular session.

In the case in California from which my friend read at such length, it was held in a long opinion there, that the authority to pass an amendment at a special session was a legislative act, and of course it is a legislative act.

You who are members of the Senate, know there is no step in the progress of a joint resolution proposing to amend the Constitution that is not also taken in the passage of a bill. There is no step taken in the passage of a bill that is not taken in the passage of a constitutional amendment. It is strictly and entirely a legislative act in the power granted by the Constitution, and that differentiates the case of 130 California from the case at bar; and it makes the 63rd, I think it is, of California, the strongest and a perfect precedent on the subject; and with respect to the Florida case, all I need to say on that subject, is that the single question decided, and your Honors may search the opinion from beginning to end, is that when a quorum of the Senate was not present, the articles of impeachment could not be presented. The impeachment was declared legal for that single and sole reason,

simply that when eight members of the Senate were in session, not being a majority of the complete number required by the Constitution, that those eight members could not receive the articles of impeachment, and for that purpose they never had been properly preferred.

That does not exist here for two reasons. First a majority of the Senate were here when the articles were received and the Journal so says; and that is conclusive on the subject, but next the complete and perfect further answer is that in this case the Articles of Impeachment don't have to be presented to the Senate at all.

Under the Constitution, the Articles of Impeachment when adopted by the Assembly are delivered to the President of the Senate, and that answers the very learned inquiry upon which my friend planted himself with such comfort to himself, that how, there was no way that the Senate could get together to receive the Articles in case they were adopted by the Assembly, and he asked, that, conceding the proposition that the Assembly did have the power to get together and adopt the Articles, what good would it do, because they would not be presented to the Senate, and it, therefore, never could be done.

Why, the Assembly, having been in session, adopting the Articles, they could go to the President of the Senate, wherever he might be, and present articles to him under that provision of the Constitution which says they shall be delivered not to the Senate, but to the President of the Senate; and thereupon it became the duty of the President of the Senate, not having any relations at all to the body itself of necessity, if the Senate were not here at all, whenever and wherever articles were presented to him, the Constitution put upon him the duty of giving notice to the members of the Court and calling together, not the Senate at all, because if the Senate had not been in session a minute of time since it adjourned at the close of the regular meeting the situation would be the same; not to call together the Senate, but to call together the members of the Court of Impeachment for the purpose of trying the articles which had thus been adopted.

Mr. Parker.— If the presiding judge of the court please, we would like to know, if we can, how much longer the counsel for

the respondent will take on their side, in reply, on account of our witnesses.

The President.— Who is to reply?

Mr. Marshall.— I think it will only take a few minutes for reply; only a few minutes.

Mr. Parker.— Would counsel mind stating whether they propose to present any other point for discussion?

Mr. Marshall.— In connection with this?

Mr. Parker.— In any other point.

Mr. Marshall.— You mean on the question we now have before us?

Mr. Parker.— No, aside from this question.

Mr. Marshall.— I recognize no other question than the question of jurisdiction. That is all we now have before us. That is the only thing I can contemplate as being within the realm of discussion.

Mr. Parker.—Assuming it to be possible that the decision might be against you.

Mr. Marshall.— I cannot assume that.

The President.— The best way is to proceed in the regular order. Who replies for the respondent.

Mr. Marshall.— Just a few words, your Honor. May it please the Court, I can only make a few discoursive remarks in reply to some of the arguments presented by our opponents.

It is claimed that the Legislature has absolute power. Now, that certainly cannot be true. There are limitations and restrictions in the Constitution upon the power of the Legislature. The legislative power is vested in the Senate and Assembly, but that power can only be exercised when the Legislature, the two houses, come together, and, subject to the numerous limitations and conditions which are contained in the Constitution. It can only legislate on any subject at extraordinary session if the Governor recommends for legislation those subjects.

So that the contention of our friend is too broad and loses sight entirely of the express terms of the Constitution. Now, they say that the Constitution provides that the Assembly has the power of impeachment, and that is a broad plenary power; but, the difficulty with their argument is, that they overlook the fact that that clause is one clause out of many which relate to the subject, and you have got to read together all of those provisions.

The Assembly has the power of impeachment, but the Assembly has only that power of impeachment provided it complies with the other provisions of the Constitution. The Constitution should be read as though in one clause it provided the Assembly has the power to impeach, but at extraordinary sessions the subject of impeachment shall not be acted upon except it is called to the attention of the Assembly.

Very frankly Senator Brackett says, and I honor him for his frankness, that the true logic of their position is, that the Assembly, having the power to impeach, the Assembly can convene itself for the purpose of exercising that power. If the Assembly has the power of convening itself, then that Pandora box of evils, which I tried to describe in my argument is opened, because, where is the limit to be and what will be the significance of recognition of the fact that a self-convened Assembly may perform so tremendous an act as that of impeachment, without any regulation of any kind, as to notice, as to how they are to be brought together, and who is to bring them together, and in contravention of the history of parliamentary bodies since parliamentary bodies began.

I again call attention to the provision of the Alabama Constitution which sought to deal with that subject, and the absence of such a provision in our Constitution is the strongest possible argument in favor of our contention.

Judge Parker says that when there is a grant of power there goes with it all the lesser powers to make the greater power effectual, and he argues from that that the very power of impeachment, that that power can be exercised at any time and in any place by the Assembly. The difficulty with that argument and that proposition is that it overlooks the qualification which has been imposed upon it almost since the first formulation of that

principle, namely, that if a power is granted and a specific method is provided for the exercise of that power, or limitations are placed upon the exercise of that power, those limitations and methods of exercising that power are conclusive and you cannot imply any powers different from those expressed, because expressed powers control. There can be no implication as against an express power.

Judge Parker also made a long illusration to show the importance of having this power of impeachment existing at all times and all hours. He showed that $50,000,000 were devoted to the highway fund in this State, and it would be possible for contractors in conjunction with public officials to loot the State and rob the State of that fund; and, therefore, the right of impeachment should exist, as it occurred to my friend that it might be that the power of impeachment would be exercised for the very purpose of preventing these looters and contractors and dishonest officials from putting their hand on the public treasury, and he intimated that there have been impeachments of that kind in this State for the purpose of preventing the consummation of such a purpose.

It is said, suppose the Governor is guilty of treason, what can be done then? It is a very simple thing. If he should lead the militia in this State against Massachusetts, as it has been suggested; if he should try to seize the Supreme Court of the State — and that would be a treasonable act — why all you would have to do would be to go to the district attorney of Albany county and call his attention to section 2380 of the Penal Code, and the Governor would be at once placed where he belongs. He would be indicted. He could be prosecuted and could be proceeded against.

Mr. Brackett.— May I have permission to ask a single question?

The President.— You will have to ask that privilege of your opponent.

Mr. Brackett.— With the consent of counsel.

Mr. Marshall.— I will permit any question counsel desires.

Mr. Brackett.— Suppose he pleaded guilty to a charge and then pardoned himself. What happens?

Mr. Marshall.— He could not pardon himself.

Mr. Brackett.— Why not?

Mr. Marshall.— Having pleaded to a charge, and being convicted, conviction, ipso facto, removes him from office. Besides that, if the counsel are familiar with the Constitution, he would know — I have read it to him this afternoon, but perhaps he did not listen to my argument — that there cannot be a pardon for treason.

Mr. Brackett.— A lesser crime than treason.

Mr. Marshall.— You are answered, aren't you?

Mr. Brackett.— No.

Mr. Marshall.— All right.

Now, they say that this constitutional provision with regard to no subject being acted upon except such as is recommended by the Governor refers to legislative acts. I would like to know where my friend gets that idea; when it says that no subject shall be acted upon that, according to my understanding, includes legislative, judicial, executive acts, acts of every character. Now, if my friend is correct, how in the world would you phrase such a provision if it is desired to exclude anything besides?

The President.— I beg your pardon, but I would hear better if you took your usual position.

Mr. Marshall.— I beg your pardon. I have got but a few minutes more, your Honor. Now, how could the Constitution have been framed to have included impeachment if it was necessary to do that in order to cover that as one of the subjects which could be acted upon? Because they say you have got to affirmatively show what subject shall be acted upon. According to their contention, our Constitution would soon grow into a field code if you would have to proceed to catalogue the various subjects which are to be considered at a session. It would then read, at an extraordinary session no subject shall be acted upon of matters of

legislation, including all appointments, all elections, all impeachments, all judicial action of every kind. This cannot be a constitution that my friend would phrase. But I do not believe he would do it if he got into a constitutional convention, because he would then use the very words that our Constitution provides, no subject shall be acted upon, and that includes all those matters to which he has referred.

Now, they say, what is the reason for this provision? The reason is very clear, as the authorities show. An impeachment is a lengthy proceeding. The preliminaries to impeachment should be a carefully considered proceeding, and that takes time, and the very purpose of the Constitution makers was that the State should not be distracted by having a special session of long duration, which would involve a great expense on the State as well as bitterness and conflict among our citizens. Therefore, it was very wisely considered that it is only in the most extraordinary circumstances that there should be an extraordinary session, and the sole judge as to the desirability or propriety of such a session is the Governor. That power rests in him alone. But my friends say that that power also rests in the Assembly because they say the Assembly in the matters of impeachment may call themselves together at any time. Now they say the Legislature is to be called together. That means both houses. But what about the Senate being called alone? What about it? What subjects can it act upon? It certainly cannot deal with legislative subjects. It necessarily is confined to dealing with matters of appointment, if it is called alone in extraordinary session. That is a perfect demonstration of the fact that the provision of the Constitution that we are now dealing with is not limiting legislative subjects, but is a broad limitation of power and is a limitation which deals not only with matters of legislation but all matters which can come before the Legislature or any one of its houses. Now, in dealing with that subject, I desire to add to my argument this statement:

The established rule of construction, that where a means by which a power granted shall be exercised are specified, no other or different means for the exercise of such power can be applied, even though considered more convenient or effective, than the means given, if given effect, necessarily confines the sessions of Senate and Assembly to the times enumerated in the Constitution.

It may be argued, however, that the Assembly and the Senate when proceeding upon an impeachment before trial do not act as the Legislature for the reason that a legislative function is not being performed.

Conceding that an impeachment is a judicial and not a legislative act, the contention that the Assembly and Senate are not the Legislature when proceeding upon an impeachment is equivalent to saying that when the Senate and Assembly are exercising a judicial function, or a function not legislative, they are no longer to be called by the term or name "The Legislature," but are then bodies of a new and distinct character. In other words, at times the Senate and Assembly are not "the Legislature."

This confusion of terms has arisen because the name which the framers of the Constitution applied to the two houses is descriptive of one class of functions exercised by them. The term "Legislature" is a convenient and arbitrary name applied to the Senate and Assembly, the same as the name "Parliament" is applied to the King, the House of Lords and the House of Commons, or the name "Congress" to the Senate and House of Representatives.

The Senate and Assembly, at all times, are the Legislature of the State of New York and each house is a part of the Legislature of the State of New York without regard to the functions being performed. So that in this case the very learned argument of Judge Parker would fall to the ground if it happened that in our Constitution the Legislature were termed the Congress or were termed Parliament or were given some other name than the Legislature. This word "Legislature" is merely an arbitrary name given to the two houses and is not intended to confound the meaning of this provision in Section 4 of Article IV of the Constitution which deals with the powers which may be exercised at extraordinary session.

Now they say that if our contention is correct the Assembly could not elect a new Speaker or new Clerk if he should die, or appoint new committees. That of course is not a fair statement of our position. We have never made any such claim as that and never could make such a claim as that. When the Legislature is in session the Assembly has the right to elect its own officers,

whether it is in extraordinary session or regular session. They have got to have officers. The provision of the Constitution certainly does not deal with the mere internal government of the House with regard to the manner in which it shall proceed. That, of course, I would not claim. Nobody would claim that. Therefore the learning on that subject which my friend has presented is entirely unnecessary because we concede that very proposition.

Now, they say the Assembly may come together at any time and impeach, and all that they have to do will be present the articles of impeachment to the President. Now, I have not read the Constitution the way my friends read it in saying that it can be delivered to the President at any time. The President of the Senate is such when the Senate is in session. Those words are not used as descriptiva persona to refer to the particular individual who happens to hold that office; my friend certainly would not contend that. Of course an impeachment could not be presented to the President on 14th Street in the city of New York or at the Throne Room at Delmonico's in the city of New York and make that an impeachment.

Mr. Brackett.— Or at the Republican Club, either one.

The President.— Gentlemen, I do not find a direct provision in the Constitution —

Mr. Brackett.— It is in the Code.

The President.— There is no provision that I find in the Constitution.

Mr. Marshall.— I agree with you.

The President.— There is no use in discussing the question when there is no such provision in the Constitution.

Mr. Marshall.— It means that they must be presented to the Senate. That is the contention which I make. They cannot be presented to an individual.

Now, the counsel has also said that we cannot attack the manner in which this impeachment was voted; we cannot go into the question whether notice was given to the members of the Assembly of the meeting. Why, his answer is the journal shows, that

a vote of a majority of the Assembly was given in favor of this impeachment, and the journal is conclusive and you cannot go back of the journal. Now, does my friend mean to say that the journal of the Assembly is one thing when it relates to legislative matters and another thing when it relates to matters of impeachment? Does my friend mean to argue that this is not an Assembly and it does not act in a legislative capacity when it impeaches and yet the journal which is the journal of a legislative body, is conclusive upon this so-called judicial act? I think my friend is getting confused in his conceptions as to the nature of this body. My contention is that this is the body called the Assembly, a part of the Legislature, and possibly journals may be conclusive in regard to those matters, possibly they may not; certainly if it is merely a judicial act, speaking again technically, since that is the way my friend uses it, it is our contention — our contention then is that we can prove that no notice was given.

But if my friend's contention is correct, that the journal is conclusive, then he must recognize this as being a legislative act under all circumstances and all conditions.

Now, my friend has also cited the opinion of Judge Rapallo in the 99th of New York. I did not read the opinion as indicating that a declaration on the part of the learned Judge that the exercise of the power of impeachment is a judicial act. I don't think that even Senator Brackett himself wanted to have it so considered that he himself believed that that was a judicial act. But I do say this advisedly, however after an investigation of this subject that if that was intended as a statement that the impeachment was a judicial act I do not believe that on careful consideration such effect would be declared to be a judicial act. As I have said several times it does not make any differences for the purpose of our case whether it is a judicial act, an executive act or a legislative act; it is action on a subject and therefore comes within the meaning of the Constitution.

Senator Murtaugh.— Mr. President, may I ask the counsel a question?

The President.— Yes, certainly. Counsel, return here, if you please, Mr. Marshall.

Senator Murtaugh.— You contend that the Governor could be indicted for a crime only during the months when the Legislature is in session. Wouldn't that destroy the theory upon which the Court of Impeachment is created, namely, that high State officials should be tried by officers of similar rank, that the average jury would be impressed by the fact that they had to try a Governor or a high State official and that the Constitution created the Court of Impeachment for that very purpose?

Mr. Marshall.— My answer to that, Senator, is that so far as our Penal Code is concerned — penal law is concerned, it is no respecter of persons. That any member of the State government who violates the penal law is subject to indictment and the provision of the Constitution which relates to impeachment expressly provides that the fact of impeachment need not in any way prevent a subsequent indictment or trial of an indictment for the offence which is made the subject matter of the impeachment. So it seems to be that the proposition that you have asked does not meet the situation because our contention is that there is no harm that can come in such a case as you have instanced because there is a remedy, an important remedy and one which can protect the State against any possible inconvenience. However, even if there were no remedy in that regard the mere matter of inconvenience is not of great importance because of the provision of the Constitution which says that an impeachment can only take place in the manner and subject to the conditions and limitations fixed and described in the Constitution.

Senator McClelland.— Mr. Presiding Judge, may I have the privilege of asking my friend a question?

The President.— Senator McClelland, certainly. Will you speak loud, because my hearing is not very good.

Senator McClelland.— I will endeavor to do so. You spoke of the —— in answer to Senator Brackett's suggestion with reference to Judge Parker's suggestion with reference to a Governor who should be guilty of treasonable conduct during a recess of the Legislature or when the session had terminated, and that the District Attorney could be applied to for the purpose of pro-

ceeding against the Governor, and thus meeting the necessities of an action of that kind. Did you contemplate in that view the fact that under the Constitution the Governor has the right to suspend the District Attorney?

Mr. Marshall.— I have; I have also recognized the fact that where the District Attorney has been suspended, there is the Attorney General, who has all the powers of the District Attorney and who can go to a grand jury and control the grand jury, and there is therefore that officer who may be considered. There is just one fact that — one matter that I wish to add to what I have said, and that is this: It was argued and decided the other day in connection with the determination of the challenges which had been interposed to certain members of this court, that there was no right to challenge any officer except the Lieutenant Governor where the Governor had been impeached or where the Lieutenant Governor was impeached, that being the only clause, the only provision contained in the Constitution, which permitted an exclusion from the Court of any officer who otherwise would be a member of this High Court of Impeachment. Now, it would seem to follow from that rule that the express limitation of the power to challenge or to exclude from participation in decision that one certain officer, that the provision of our Constitution with regard to him may be done at extraordinary sessions, which has no exception at all, which is general in its language, which is all-embracing, ought to be given that effect upon the very principle which has led to the first decision rendered by this tribunal.

Mr. Parker.— I would like to call the attention of the Court to People vs. Morton, 156 New York, upon this question we are now discussing, the People on relation of Morton.

The President.— Where the Court of Appeals held that a writ of mandamus or certiorari or some writ of that character would not lie to the Governor.

Mr. Parker.—And would not lie to the Governor because the court had not power to enforce it and with regard to this proposition that it was not yet settled that the power exists in this

country to attack the Chief Executive of the State in the courts for any criminal offence from murder down.

Mr. Marshall.— I will certainly assert that that power exists.

Mr. Parker.— Well, you can't prove it.

The President.— My brethren, of course you will readily appreciate that the point which has been discussed before us is of the utmost importance. It goes to the very foundation of this proceeding. If decided in one way the proceeding must necessarily stop. Therefore it is that this should be decided by the whole of this Court, and the presiding member of the Court does not feel inclined to use the power granted under the rules to decide it in the first instance, though he has no hesitation, if the members want it in stating or expressing his opinion, as he has no wish to evade any responsibility. You have the power to clear the court for private consultation under the rule, and even if it is not cleared any member has the right to debate this question.

Judge Collin.— Mr. Presiding Judge, I move that the Court room be cleared and that this Court enter into private consultation.

The President.— Is the motion seconded?

Senator Sullivan.— I second the motion.

The President.— All in favor please say aye.

(The members of the Court responded accordingly.)

The President.— Contrary minded no. The motion is carried.

Mr. Herrick.— Mr. President, will we be excused?

The President.— One moment, gentlemen. What was that?

Mr. Herrick.— Will we be excused from attendance until to-morrow. It is twenty minutes of six now, the adjournment hour.

The President.— Yes, counsel may go until to-morrow.

The Crier.— All witnesses are discharged until to-morrow morning at 10 o'clock.

The President.— All the journalists and counsel will leave the room, all except the members of the Court and the officers of the Court will leave.

Senator Murtaugh.— Mr. President, I ask that the President instruct the Clerk to see that the lobbies are cleared also.

The President.— Yes, see that the lobbies are cleared too.

The President.— Gentlemen, the order of exclusion apparently has been enforced. If any member of the court knows of any violation of it, that anyone is improperly present, if they will call the attention of the Presiding Officer to it he will see that he is excluded. That being done, what is your pleasure now?

Judge Werner.— I move that we proceed to a roll call which will probably bring on any discussion there may be as the votes are called for.

Senator Sullivan.— I second the motion.

Senator Thompson.— Mr. President, preliminary to that I move that the objection be overruled.

Judge Werner.— The objection to the jurisdiction, you mean?

Senator Thompson.— Be overruled.

The President.— I think that is in order because there must be something on which to call the roll.

Senator Wagner.— Mr. President, may I suggest that the President put the question to the court, the pending question, and then upon that we have a roll call.

The President.— The question is, shall the objection to the jurisdiction of the court to proceed on the Articles of Impeachment presented to it because the Assembly was in extraordinary session and the Governor had not recommended any action on the subject matter. Shall that objection be sustained or not? I put it, shall it be overruled or not. Of course voting in the affirmative holds that the objection is bad practically; a vote in the negative holds that the objection is good. Do you all understand the position?

Senator Carswell.— Mr. Presiding Judge, may I suggest that the question that is before the court is the motion of counsel, being a motion to dismiss?

The President.— Practically yes.

Senator Carswell.— May not the question be put on that motion?

The President.— It is only put in a different form. If that objection is sustained this proceeding ends.

Senator Carswell.— But the point, Mr. President, that I wish to make is that the proper procedure would require that the question put be, shall the motion be granted?

The President.— Well, if you prefer it, put it that way.

Senator Thompson.— Mr. President, I accept that amendment to my motion.

The President.— Very good. Then, put it. You will have to reverse the vote on that; that is to say, those that hold that that objection is good, will vote in the affirmative for the dismissal of the proceeding; those who hold the opinion that it is bad will vote no. And I would say of course that any gentleman here, until the final determination is announced, will have the right to change his vote; you are not concluded by your vote. Call the roll, Mr. Clerk.

The Clerk.— Senator Argetsinger.
Senator Argetsinger.— No.

The Clerk.— Judge Bartlett.

Judge Bartlett.— Mr. President, this, as I understand it, is a private consultation of the court.

The President.— Yes.

Judge Bartlett.— And in voting either at this time or some other, the voting being tentative as I understand it, I would like to give the reasons for my vote. I vote no.

The President.— Well, you can give the reasons now. The Presiding Officer thought that this would be the best occasion where any gentleman who wished to say anything about his position, for him to take advantage of it now and say it. Judge Bartlett, do you wish to say anything further?

Judge Bartlett.— No.

Senator Blauvelt.— Mr. President, may I ask if this is only a tentative vote, if a formal vote will be taken when the court is in open session, or is this in the nature of an expression to the President of the Court?

The President.— Possibly not. It may be taken here, either place, but this is of course a tentative vote unless the gentlemen wish to make it final. Of course this is not exactly like an ordinary parliamentary assembly. This is more like a court, and until the final decision is announced the right to change a vote exists.

The Clerk.— Senator Blauvelt.
Senator Blauvelt.— No.

The Clerk.— Senator Boylan.
Senator Boylan.— No.

The Clerk.— Senator Brown.
(No response.)

The Clerk.— Senator Bussey.
Senator Bussey.— No.

The Clerk.— Senator Carroll.
(No response.)

The Clerk.— Senator Carswell.
Senator Carswell.— No.

The Clerk.— Judge Chase.
Judge Chase.— I vote no. I do not care to go into detail in expressing my opinion for the moment. But when the roll call is completed if I am not satisfied with what has been said already and want to add to what has been said, I want to reserve that privilege.

The Clerk.— Senator Coats.
Senator Coats.— No.

The Clerk.— Judge Collin.
Judge Collin.— I vote no, and I understand that the privilege accorded to Judge Chase is open to everyone.

The President.— Certainly to every member.

The Clerk.— Judge Cuddeback.
Judge Cuddeback.— No.

The Clerk.— Judge Cullen.
Judge Cullen.— I vote no. And I might as well take this opportunity of expressing the reasons for my vote. First I might dispose of the question that has been raised, that though not the decisive one before us has a material bearing on it. It is urged by the learned counsel for the Managers that the Assembly has the inherent right to meet at any time and present Articles of Impeachment. From that doctrine I dissent in toto. It is true that it is the Assembly that has the right given it by the Constitution to impeach, but the Assembly does not consist of the individual members of its body except when they are duly assembled. That is plain elementary parliamentary law. It is also the common law applying to all bodies. The individual action even of a majority does not constitute the action of the body whatever it may be, unless all parties have had an opportunity to attend and be heard. Any other rule it seems to me would cause or might cause inextricable confusion in the management of public affairs. As an individual, an Assemblyman, or Senator, or a member of any parliamentary body has no authority. It is the House when convened. The Constitution is silent as to what are the powers of the two houses of the Legislature except in two or three particulars. The rest of their powers they possessed either under well-recognized parliamentary law that we inherit from England or by virtue of a statute upon the subject,— the legislative act which is a reproduction of the old recognized revised statutes. That power is given to punish for contempt. It may assert its dignity, either House, and protect itself, but that is given only to the House. If we assume that any member

of the Assembly may convene that body, or the Speaker for the purpose of impeachment, the body so meeting would have no power to protect itself. It would be a scene of disorder, and if so, before there had been any election of a Speaker one member might convene it at one spot and one at another. It would lead to anarchy, and the extreme case that has been suggested, that a governor might commit treason while it is theoretically possible to imagine it is quite improbable, and I think little weight should be given to it. Anyway, extreme cases do not control the construction of statutes or constitutions.

Each house is the judge of the qualifications and election of its own members. The Federal Congress does not meet until a year after its election. If a petition claimed to be signed by the majority of the House of Representatives were presented, what right would the Senate have to determine whether they were duly elected representatives or not? I shall not pursue that discussion further because it is not controlling of the question before us, though it has a material bearing. Because if the counsel are right in that position, that of their own motion the Assembly may convene itself for the purpose of impeachment, then of course it is unnecessary to discuss the second question because then, by convening or calling an extraordinary session of the Legislature, the Governor could not in any way diminish or impair the general powers of the Assembly.

And, further, I might say this: There was a decision quoted here before you, People on the relation of Carter v. Rice, where Judge Peckham wrote, in which he said that after adjourning the houses of the Legislature can convene. As I have said, that was a case that involved political considerations. But the court was unanimous on the opinion of Judge Peckham, but which has no reference to the question now before us. Therefore we get to the only question in this case in my judgment.

The Constitution gives the Assembly power to impeach. It was in regular session. I use regular session; I mean it is regularly convened in response to a call by the Governor. Now, having the power of impeachment, it could exercise that at any time unless we find another provision in the Constitution which restricts it or forbids it. That provision is claimed to be found

in the fourth section of the fourth article of the Constitution, in which it is said:

> "At extraordinary sessions, no subject shall be acted upon except such as the Governor may recommend for consideration."

Does that apply to this power of impeachment? It is urged, of course, that this is not an ordinary legislative power except in the sense that anything that is done by the Legislature is legislative. The counsel for the respondent contend that this includes all business that may be transacted by either house of any character, and reliance strongly is made by him on the differences between the phraseology of a similar provision as adopted by the Constitutional Convention of 1868 and as it appears in the present Constitution, which was the result of a report of a commission appointed by Governor Hoffman.

Now, there would be force in that argument if there were not other facts that really abrogate the force of the argument and tend to establish a contrary proposition. As you may remember, the articles, the only article recommended or adopted by the Constitutional Convention of 1868, which was approved by the people, was the judiciary article. Now, by looking at the journal of this commission, we find how the question came up. As originally reported, there was no provision of that kind.

Mr. Van Buren moved to amend the fourth section as adopted by inserting after the words " extraordinary occasions " the words following: "At such extraordinary sessions no business shall be transacted except such as the Governor may recommend for consideration."

That was the provision that now appears in the Constitution. You see, there is no indication in this record, which was the only one accessible, that there was any intentional deviation or change from the language of the Constitution — adopted by the Constitutional Convention of 1868. In fact, from this it would seem that in the first instance it was not thought well or essential perhaps to add such a provision at all. So much for that. But it appears by referring to the Senate documents for 1873 that when the report of this Commission was submitted to the Legislature it

added thereto the reports of special committees to the Constitutional Commission in reference to the change that it recommended. As to Article IV. Article IV relates to the Governor and Lieutenant Governor, their powers and duties. Now, omitting matters that are not relevant to the question before us, we come to this:

> "That in limiting the action of the Legislature at extraordinary sessions the Commissioners believe that on such occasions it was unwise to engage in general legislation and therefore proposed to confine the Legislature to the subjects recommended by the Legislature."

There it would appear that as far as the commission was concerned, the intention was to prevent legislation. But of course the effect of that Constitutional provision depends upon the action of the Legislature and the vote of the people, and the construction put upon that by the Commission which recommended it is not conclusive, but it is cogent and at least disposes of any argument that may be made on account of the adoption of a different phraseology in this section as now enacted from that which was adopted by the Convention of 1868. And when you look further there was no reason that we can see why it should have been intended to limit the power of the Assembly as to impeachment. The evil, or what was regarded as the evil, was the disposition to enter into general legislation. That appears from this report and anyone familiar with the discussions must be aware of it, and it is perfectly apparent that that provision — any business cannot be stretched to the utmost limit. For instance, the power that is given by the statute if a member of either House commits an offence, why that power must exist, whether the Governor calls attention to it or not. I am not speaking now merely of their own interior regulations but as far as their actions, their power to punish for contempt anyone who interferes with their deliberations, or who refused to attend to their subpoena and a number of things. I think that when it was said that the Governor shall submit such business for consideration it meant such business, that it was the Governor's business, not of the Legislature, not of the Senate. But it gave the Assembly the right to impeach.

I, therefore, am of the opinion that this does not come within the limitation of the Constitution at all. We must give a reasonable construction of it, and so construed these subjects all relate to what the Legislature as a body can do and not to the power vested in one branch of the Legislature.

I have taken up more time, gentlemen, than I intended to. I vote no.

The Clerk.— Senator Cullen.
Senator Cullen.— No.

The Clerk.— Senator Emerson.
Senator Emerson.— No.

The Clerk.— Senator Frawley.
Senator Frawley.— No.

The Clerk.— Senator Godfrey.
Senator Godfrey.— No.

The Clerk.— Judge Gray.
(No response.)

The Clerk.— Senator Griffin.
Senator Griffin.— No.

The Clerk.— Senator Heacock.
Senator Heacock.— No.

The Clerk.— Senator Healy.
Senator Healy.— No.

The Clerk.— Senator Heffernan.
Senator Heffernan.— No.

The Clerk.— Senator Herrick.
Senator Herrick.— No.

The Clerk.— Senator Hewitt.
Senator Hewitt.— No.

The Clerk.— Judge Hiscock.
Judge Hiscock.— No.

The Clerk.— Judge Hogan.
Judge Hogan.— No.

The Clerk.— Senator McClelland.
Senator McClelland.— No.

The Clerk.— Senator McKnight.
Senator McKnight.— No.

The Clerk.— Senator Malone.
Senator Malone.— No.

The Clerk.— Judge Miller.
Judge Miller.— No.

The Clerk.— Senator Murtaugh.
Senator Murtaugh.— No.

The Clerk.— Senator O'Keefe.
Senator O'Keefe.— No.

The Clerk.— Senator Ormrod.
Senator Ormrod.— No.

The Clerk.—Senator Palmer.
Senator Palmer.— No.

The Clerk.— Senator Patten.
Senator Patten.— No.

The Clerk.— Senator Peckham.
Senator Peckham.— No.

The Clerk.— Senator Pollock.
Senator Pollock.— No.

The Clerk.— Senator Ramsperger.
Senator Ramsperger.— No.

The Clerk.— Senator Sage.
Senator Sage.— No.

The Clerk.— Senator Sanner.
Senator Sanner.— No.

The Clerk.— Senator Seeley.
Senator Seeley.— No.

The Clerk.— Senator Simpson.
Senator Simpson.— No.

The Clerk.— Senator Stivers.
Senator Stivers.— No.

The Clerk.— Senator Sullivan.
Senator Sullivan — No.

The Clerk.— Senator Thomas.
Senator Thomas.— No.

The Clerk.— Senator Thompson.
Senator Thompson.— No.

The Clerk.— Senator Torborg.
Senator Torborg.— No.

The Clerk.— Senator Velte.
Senator Velte.— No.

The Clerk.— Senator Wagner.
Senator Wagner.— No.

The Clerk.— Senator Walters.
(No response.)

The Clerk.— Senator Wende.
Senator Wende.— Mr. Presiding Judge, as I read the Constitution, the Assembly at some time had an absolute right of framing these articles of impeachment. That right existed up to the time that they took an adjournment sine die; and when they adopted the resolutions adjourning sine die they foreclosed their right to any question of impeachment or to act upon anything else, if they were to be called together in extraordinary session, only such subjects as the Governor would present. I therefore vote aye.

The Clerk.— Senator Wheeler.
(No response.)

The Clerk.— Senator White.
Senator White.— No.

The Clerk.— Judge Werner.
Judge Werner.— No.

The Clerk.— Senator Whitney.
Senator Whitney.— No.

The Clerk.— Senator Wilson.
Senator Wilson.— No.

The President.— Now, does not some other member of the court wish to give his reasons for his vote?

Senator Thompson.— The Presiding Officer asked if any further or any other Senator desired to give a reason. I desire to concur in the opinion of the Chief Judge of the Court, except in this: I think that the Legislature would have the right to provide for the assemblage of the Assembly at a time when they were neither in general nor extraordinary session.

The President.— I am not inclined to take issue with that now. Suffice it to say, I mean that if that power exists, it never has been exercised, because there is no statute authorizing it.

Senator Thompson.— Then I concur with the Chief Justice entirely.

Senator Foley.— I just want to bring to the attention of the court a point made by Mr. Marshall for the respondent, that with regard to the section for the reapportionment of the State into Senate districts, that the apportionment must be held at the first regular session after the enumeration of citizens or inhabitants. Mr. Marshall commented on the fact that that indicated a limitation on the right of the Legislature even at an extraordinary session to legislate upon the question of apportionment, and it also indicated a limitation upon the right of the Governor to recommend such legislation. I think it was at the session of 1909 that the Legislature enacted a reapportionment of the State, and your

Honors, and especially the Presiding Justice, in the Reynolds case in the 202nd Court of Appeals reports, held that the word "regular" was a limitation with regard to the time rather than a prohibition against legislation of any kind. That would indicate a desire to depart from the strict wording of the Constitution, and that it would still be possible, as in this case, to go without the strict language of the Constitution and to read into it implied powers.

Judge Bartlett.— I move, unless there is some objection, that the vote already taken stand as the vote, and that the President decide the motion accordingly.

Senator Torborg.— I second the motion.

Senator Wende.— I second the motion.

The President.— I think it but fair to call the roll once more, as it was stated expressly that the first roll call was only to be a tentative vote.

The Clerk.— Senator Argetsinger.
Senator Argetsinger.— No.

The Clerk.— Judge Bartlett.
Judge Bartlett.— No.

The Clerk.— Senator Blauvelt.
Senator Blauvelt.— No.

The Clerk.— Senator Boylan.
Senator Boylan.— No.

The Clerk.— Senator Brown.
(No response).

The Clerk.— Senator Bussey.
Senator Bussey.— No.

The Clerk.— Senator Carroll.
(No response).

The Clerk.— Senator Carswell.
Senator Carswell.— No.

The Clerk.— Judge Chase.
Judge Chase.— No.

The Clerk.— Senator Coats.
Senator Coats.— No.

The Clerk.— Judge Collin.
Judge Collin.— No.

The Clerk.— Judge Cuddeback.
Judge Cuddeback.— No.

The Clerk.— Judge Cullen, President.
The President.— No.

The Clerk.— Senator Cullen.
Senator Cullen.— No.

The Clerk.— Senator Duhamel.
Senator Duhamel.— No.

The Clerk.— Senator Emerson.
Senator Emerson.— No.

The Clerk.— Senator Fitzgerald. (Excused.)

The Clerk.— Senator Foley.
Senator Foley.— No.

The Clerk— Senator Frawley.
Senator Frawley.— No.

The Clerk.— Senator Godfrey.
Senator Godfrey.— No.

The Clerk.— Judge Gray.
(No response.)

The Clerk.— Senator Griffin.
Senator Griffin.— No.

The Clerk.— Senator Heacock.
Senator Heacock.— No.

The Clerk.— Senator Healy.
Senator Healy.— No.

The Clerk.— Senator Heffernan.
Senator Heffernan.— No.

The Clerk.— Senator Herrick.
Senator Herrick.— No.

The Clerk.— Senator Hewitt.
Senator Hewitt.— No.

The Clerk.— Judge Hiscock.
Judge Hiscock.— No.

The Clerk.— Judge Hogan.
Judge Hogan.— No.

The Clerk.— Senator McClelland.
Senator McClelland.— No.

The Clerk.— Senator McKnight.
Senator McKnight.— No.

The Clerk.— Senator Malone.
Senator Malone.— No.

The Clerk.— Judge Miller.
Judge Miller.— No.

The Clerk.— Senator Murtaugh.
Senator Murtaugh.— No.

The Clerk.— Senator O'Keefe.
Senator O'Keefe.— No.

The Clerk.— Senator Ormrod.
Senator Ormrod.— No.

The Clerk.— Senator Palmer.
Senator Palmer.— No.

The Clerk— Senator Patten.
Senator Patten.— No.

The Clerk.— Senator Peckham.
Senator Peckham.— No.

The Clerk.— Senator Pollock.
Senator Pollock.— No.

The Clerk.— Senator Ramsperger.
Senator Ramsperger.— No.

The Clerk.— Senator Sage.
Senator Sage.— No.

The Clerk.— Senator Sanner.
Senator Sanner.— No.

The Clerk.— Senator Seeley.
Senator Seeley.— No.

The Clerk.— Senator Simpson.
Senator Simpson.— No.

The Clerk.— Senator Stivers.
Senator Stivers.— No.

The Clerk.— Senator Sullivan.
Senator Sullivan.— No.

The Clerk.— Senator Thomas.
(No response.)

The Clerk.— Senator Thompson.
Senator Thompson.— No.

The Clerk.— Senator Torborg.
Senator Torborg.— No.

The Clerk.— Senator Velte.
Senator Velte.— No.

The Clerk.— Senator Wagner.
Senator Wagner.— No.

The Clerk.— Senator Walters.
(No response.)

The Clerk.— Senator Wende.
Senator Wende.— Aye.

The Clerk.— Judge Werner.
Judge Werner.— No.

The Clerk.— Senator Wheeler.
(No response.)

The Clerk.— Senator White.
Senator White.— No.

The Clerk.— Senator Whitney.
Senator Whitney.— No.

The Clerk.— Senator Wilson.
Senator Wilson.— No.

The Clerk.— Fifty-one negatives; one affirmative.

The President.— Now, gentlemen, it seems to the presiding officer that it would be wiser to announce now to the public this decision rather than have it held until to-morrow, and then in the meantime have people speculating on what this Court has decided, one way or the other.

Judge Bartlett.— I modify my motion accordingly.

The President.— So, if it meets your approval, I suggest we go into open session again, if anyone will make that motion and then the presiding judge will announce the decision of the Court.

Judge Hiscock.— I move we go into open session, and the presiding officer announce the decision of the Court.

The President.— All in favor of the motion please say aye; opposed, no. (The motion was unanimously carried.)

The President.— Open the doors.

The Executive Session was thereupon closed, and the Court resumed the public hearing.

PUBLIC HEARING RESUMED.

The President.— This being an open session the presiding officer announces that the motion of respondent's counsel to dismiss the proceedings is denied.

Thereupon the Court adjourned until Tuesday, September 23, 1913, at 10 A. M.

SENATE CHAMBER,

ALBANY, N. Y., *September* 23, 1913.

Pursuant to adjournment the Court convened at 10 o'clock a. m.

PRESENT:

Hon. EDGAR M. CULLEN, Presiding Judge,
and
THE JUDGES OF THE COURT OF APPEALS,
and
THE SENATORS OF THE STATE OF NEW YORK.

APPEARANCES:

THE MANAGERS:

Same as heretofore.

Counsel for the Managers:

Same as heretofore.

Counsel for the Respondent:

Same as heretofore.

The President.— Call the roll, clerk.

The roll was called and showed a quorum present, with the following absentees:

Senator Boylan.
Senator Brown.
Senator Emerson.
Senator Heacock.
Senator O'Keefe.
Senator Pollock.
Senator Sage.
Senator Thompson.
Senator Thomas.
Senator Walters.
Senator Whitney.

The President.— Open Court, crier.

The Crier.— Hear ye, hear ye, hear ye, all persons having any business before this Court of Impeachment held in and for the State of New York may now draw near and give their attendance and they will be heard.

The President. — The motion of the respondent to dismiss the articles of impeachment on the ground that the Assembly had no right to prefer them at an extraordinary session having been overruled, it now becomes incumbent on the respondent to make answer.

Mr. Herrick.— In view —

Mr. Kresel.— Judge Herrick, pardon me, may I call the court's attention to two corrections in the record of Friday. On page 59 of the printed record the vote upon the question of allowing the challenges is recorded as Noes 32. It should be Noes 52.

The President.— Page 59?

Mr. Kresel.— Page 59. Your honor has the stenographer's record. I am speaking of the printed record.

The President.— I don't know that I have it. Yes, here it is.

Mr. Fox.— Well, Mr. Kresel, of course anything of that kind can be corrected.

Mr. Kresel.— Yes, but I want to get it straight.

The President.— The recollection of the presiding officer, and indeed, the record of the individual votes of the members shows the statement that the noes were 32 is erroneous and it should be 52. Unless there is any objection such correction will be made.

Mr. Kresel.— Now, if your honor please, on page 77 of the printed record the stenographer notes that a replication was filed to the plea in bar which was offered by the respondent, but a copy of the replication is not made a part of the record; and we ask that the stenographer be instructed that a copy be inserted in the record.

The President.— It may be inserted, or probably the easier way is to annex it at the close.

Mr. Kresel.— I think it might be well to have it put into the record now and here is the original. Return it to the clerk.

The President.— The original of course must be filed with the clerk of the Court.

Mr. Kresel.— Yes, sir.

STATE OF NEW YORK,

IN THE

COURT FOR THE TRIAL OF IMPEACHMENTS.

The People of the State of New York *against* William Sulzer, Governor of the State of New York.

The Managers on the part of the Assembly, having considered the plea of the respondent to the jurisdiction of this Court, say that it is not true that the proceedings now pending before this Court are without jurisdiction, or null or void, or of no effect, and protest that this proceeding should not be dismissed, as prayed for by said respondent.

The Managers on the part of the Assembly allege that this Court has jurisdiction to try the respondent, under the articles of impeachment heretofore filed with this Court, and served upon the respondent; that the said articles of impeachment were duly and regularly adopted by the Assembly of the State of New York.

And said Managers say further that it is not true, as alleged in the respondent's plea, that a concurrent resolution adopted by the Legislature of the State of New York on July 23, 1913, providing that said Legislature then stand adjourned until the 11th day of August, 1913, was not adopted by a majority of the members duly elected to each branch of the Legislature, but that, on the contrary, said concurrent resolution was duly adopted by a majority of the members duly elected to each branch of said

Legislature, and that pursuant to said concurrent resolution said Legislature regularly, duly and lawfully reconvened on said 11th day of August, 1913.

And the Managers aforesaid further say that it is not true that the several branches of the Legislature of the State of New York were convened in said extraordinary session solely for the purpose of taking action on various subjects which were recommended to them for consideration by the respondent as Governor of the State of New York, and said Managers say that on said 13th day of August, 1913, when the Assembly impeached the respondent herein, and when said articles of impeachment were adopted, the said Assembly was duly, regularly and lawfully convened and in session, and that the resolution impeaching the respondent and said articles of impeachment were duly, regularly and lawfully adopted by a majority of all of the members elected to said Assembly.

And the Managers on the part of the Assembly do further say that it is not true that no notice was given to the members of the Assembly, prior to the adoption by the said Assembly of said articles of impeachment, that the subject of the impeachment of the respondent, or the consideration of charges against him would be taken up at the session of said Assembly beginning on August 11, 1913, or at any other time.

And the Managers do further say that it is not true that at the time that the subject of the impeachment of the respondent was under consideration and was voted upon there were absent about twenty-six members of the Assembly, to none of whom any notice of said proposed action was given.

And the Managers on the part of the Assembly do further say that it is not true that the impeachment of the respondent by the Assembly as aforesaid was without constitutional authority, and that the articles of impeachment preferred against the respondent were null, void and of no effect, and that the proceedings now before this Court do not constitute due process of law and are in violation of the provision of the Constitution of the State of New York, and of the Fourteenth Amendment to the Constitution of the United States, and that this Court is without jurisdiction to entertain or to determine the same, but that the said Managers say that the action taken by the Assembly with respect to the impeach-

ment of the respondent and each and every step therein taken and adopted by said Assembly, was taken pursuant to the provisions of the Constitution of the State of New York, and was regular and lawful in every particular and within the jurisdiction of the said Assembly, and that said articles of impeachment preferred against the respondent are legal and in full force and effect, and that none of the proceedings before said Assembly resulting in the impeachment of the respondent and the preferring of articles of impeachment to the Senate either constitutes a violation of the provisions of the Constitution of the State of New York, or of the Fourteenth Amendment to the Constitution of the United States, or of any provision of said Constitution and said Managers do say that this Court has full jurisdiction in the matter to entertain and determine the same.

And the Managers on the part of the said Assembly reserve to themselves all objections to the insufficiency of the matters alleged in said plea for that the same, as alleged, do not constitute any lawful or valid reason why this Court should not entertain and determine this proceeding or any defense to said articles of impeachment or any objection to the sufficiency of the impeachment.

Dated, Albany, N. Y., September 19, 1913.

(Sig.)

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JOSEPH V. FITZGERALD,
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Managers.

Mr. Herrick.— Bowing, of course, as we must, to the ruling of the Court, Mr. President and members of the Court, we now appear generally for the respondent, the same counsel appearing as did appear specially. And in that connection permit me, Mr.

Presiding Judge and members of the Court, to say that when these articles were first presented —

The President.— I am afraid the members of the Court do not hear you.

Mr. Herrick.— When these articles were first presented the Governor was advised that inasmuch as there was some doubt as to the legality of the impeachment, that it was his duty not to surrender the functions of his office until that question had been determined. After the decision of Mr. Justice Hasbrouck he ceased to perform any executive functions, and it is unnecessary for me to say perhaps that he will not perform any in the future until the termination of this trial.

I now, in pleading, as we are permitted to do under the Code of Procedure, offer certain objections to the sufficiency of articles first, second and sixth of the articles of impeachment. May the Clerk read them?

Mr. Kresel.— May I have one copy?

Mr. Herrick.— The Clerk will let you have one of his copies. I think for the purposes of this discussion my associates think that they ought to be read.

The President.— They should be read?

Mr. Herrick.— Yes.

The President.— The Clerk asks you if you prefer to read them yourself?

Mr. Herrick.— Very well.

The President.— If you are familiar with them, or would you rather have the Clerk read them?

Mr. Herrick.— They are typewritten. Will you read them, Mr. Marshall?

Mr. Marshall.— Which do you want, the first, second and sixth?

Mr. Herrick.— No, read the objections.

Mr. Marshall.— I thought you wanted me to read the charges first.

Mr. Herrick.— No, just the objections.

Mr. Marshall (Reading).— The above-named respondent, William Sulzer, in response to the first article of impeachment preferred against him says:

That this Court ought not to take cognizance of said article, and this respondent objects to the sufficiency thereof, because it appears upon the face of such article that the matters and things therein alleged and set forth are matters and things that occurred and took place, if they ever did occur or take place, prior to the first day of January, 1913, before this respondent became and was Governor of the State of New York, and, therefore, did not constitute wilful and corrupt misconduct in office; and this respondent objects to and denies the sufficiency of the matters and things set forth in said first article of impeachment to constitute a cause or causes for impeachment of this respondent, and asks that said article be quashed and set aside, and that this Court refuse to take further cognizance of said article.

And this respondent in response to the second article of impeachment preferred against him, says:—

That this Court ought not to take cognizance of said article, and this respondent objects to the sufficiency thereof, because it appears upon the face of such article that the matters and things therein alleged and set forth are matters and things that occurred and took place, if they ever did occur or take place, prior to the 1st day of January, 1913, before this respondent became and was Governor of the State of New York, and, therefore, did not constitute wilful and corrupt misconduct in office; and this respondent objects to and denies the sufficiency of the matters and things set forth in said second article of impeachment to constitute a cause or causes for impeachment of this respondent, and asks that said article be quashed and set aside, and that this Court refuse to take further cognizance of said article.

And this respondent in response to the sixth article of impeachment preferred against him, says:—

That this Court ought not to take cognizance of said article, and this respondent objects to the sufficiency thereof, because it appears upon the face of such article, that the matters and things

therein alleged and set forth are matters and things that occurred and took place, if they ever did occur or take place, prior to the 1st day of January, 1913, before this respondent became and was Governor of the State of New York, and, therefore, did not constitute wilful and corrupt misconduct in office; and this respondent objects to and denies the sufficiency of the matters and things set forth in said sixth article of impeachment to constitute a cause or causes for impeachment of this respondent and asks that said article be quashed and set aside, and that this Court refuse to take further cognizance of said article.

SECOND.

And this respondent in further response to the first article of impeachment against him says that this Court ought not to take cognizance of the said article, and this respondent objects to the sufficiency thereof, for this, that at the time of making and filing the statement therein referred to there was nothing in the laws or statutes of this State that required this respondent as a candidate for the office of Governor of the State of New York, to make and file any statement in which should be set forth the contribution or moneys received by him while such candidate.

And this respondent in further response to the second article of impeachment against him says that this Court ought not to take cognizance of the said article, and this respondent objects to the sufficiency thereof because at the time of making the statement and affidavit or oath referred to in said article there was nothing in the laws or statutes of this State that required him to make oath or affidavit to any statement setting forth contributions made to or receipts of money or property received by him; and that the statement to which the affidavit was attached as set forth in said second article was not a statement required by law to be made by this respondent.

Mr. Herrick.— Judge Vann, one of our Associate Counsel, came here, as some of the members of the Court know, after a very severe illness caused by ptomaine poisoning. He should not have been here. He insisted upon coming. We have received a letter from his physician stating that he is still worse than when

here, and that he has forbidden his attendance for some days to come. Judge Vann had prepared an argument upon this branch of the case, which I will ask to have read at the conclusion of my oral argument.

Mr. President and Members of the Court.— The text of my argument is that ours is a government of laws and not of men. The Assembly in preferring articles of impeachment, and the Court for the trial of impeachments so preferred, are both governed by the laws of the State, and the law of the State is, that public officials can only be impeached "for wilful and corrupt misconduct in office."

In asking that these articles be dismissed we are not endeavoring to shield William Sulzer from answering the matters therein set forth. Sooner or later he must do so, either here or at the bar of public opinion, and when that time comes, whether it be here or elsewhere, we have no apprehension but what those answers will be full and sufficient.

While we are concerned for Mr. Sulzer, we have a graver and higher duty to perform than merely to prevent his being compelled to give an explanation of the charges contained in these several articles. We are concerned for the proper administration of the law. We are concerned for the Governor of the State, and all other executive officers who are subject to impeachment, for the precedent now to be set by you will not only control all future proceedings in this State, but will be vastly influential in controlling and directing similar proceedings in every State of the Union.

This is the highest and greatest tribunal of justice in this State. From the beginning of our government, State and National, our highest courts have stood second only to the Supreme Court of the United States. We have been proud of their standing, and we are anxious that in the proceedings now to be had, and the decision to be made, that that high standing shall be maintained, and justice administered according to the law of the land, and not in furtherance of passion, prejudice or political animosity; and that this Court will demonstrate that this is still a State where government by law, and not by men, is enforced and maintained.

The power of impeachment unless carefully guarded is an exceedingly dangerous power. Jefferson said of it:

> "I see nothing in the mode of proceeding by impeachment but a most formidable weapon for the purposes of a dominant faction that ever was contrived. It would be the most effectual one of getting rid of any man whom they consider as dangerous to their views. I know of no solid purpose of punishment which the courts of law are not equal to, and history shows, that in England, impeachment has been an engine more of passion than justice."

Hamilton speaking upon the same subject, said:

> "A well constituted court for the trial of impeachments is an object not more to be desired than difficult to be obtained in a government wholly elective. The subjects of its jurisdiction are those offenses which proceed from the misconduct of public men, or in other words from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated political, as they relate chiefly to injuries done immediately to the society itself. The prosecution of them for this reason will seldom fail to agitate the passions of the whole community, and to divide it into parties more or less friendly or inimical to the accused. In many cases, it will connect itself with the pre-existing factions, and will enlist all their animosities, partialities, influence and interest on one side, or on the other; and in such cases there will always be the greatest danger, that the decision will be regulated more by the comparative strength of parties, than by the real demonstrations of innocence or guilt.
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> "The delicacy and magnitude of a trust, which so deeply concerns the political reputation and existence of every man engaged in the administration of public affairs, speak for themselves. The difficulty of placing it rightly in a government resting entirely on the basis of periodical elections, will as readily be perceived, when it is considered that the most conspicuous characters in it will, from that circumstance, be too often the leaders, or the tools of the most cunning or the

most numerous faction; and on this account, can hardly be expected to possess the requisite neutrality towards those whose conduct may be the subject of scrutiny.

"The awful discretion, which a court of impeachments must necessarily have, to doom to honor or to infamy the most conspicuous and the most distinguished characters of the community, forbids the commitment of the trust to a small number of persons." (The Federalist, No. 65, pp. 490–491; 492–493.)

Surely all these reasons advanced by Hamilton as to the nature of a court that should try impeachments, apply also to the necessity of there being some law determining what public officials can be impeached for.

It is claimed, as we understand, that, inasmuch as the Constitution merely provides that the Assembly shall have the power of impeachment, and then provides for a Court to try such impeachments, without stating for what causes impeachments will lie, that there is no limit to the causes for which the Assembly may impeach, and no limit to the jurisdiction of this Court in determining the causes for impeachment.

Note: The language of the Constitution is " The Assembly shall have the power of impeachment." There is no limit as to the persons who may be impeached, and it might as well be claimed that this conferred the power to impeach private citizens and disqualify them from holding office, as well as public officials, as to claim that it confers the power to impeach for any cause that the Assembly or this Court deems sufficient.

In other words, that there is no law governing this tribunal as to what is an impeachable offense, except its own determination. That it is a law unto itself.

If that be the law, if the Assembly can impeach for any cause that it sees fit, for acts done by an official during his term of office, as well as for acts done by him when a private citizen before he had become a public official, thereby suspending him indefinitely from discharging the duties of his office, then the door is opened wide to an unscrupulous majority to impeach an official whose conduct in office has been upright and honest, who has stood in the way of graft and corruption, but who perchance, be-

fore coming into office has been guilty of some indiscretion, or worse. To impeach, in fact, not for official misconduct, but because of his refusal to abuse the powers of his office.

If you are simply called upon to determine as to whether such accused official has in fact committed the acts alleged in the articles of impeachment, then the executive department of the Government is at the mercy, not, of the legislative department of the government, but, of a single branch of it.

On the other hand, if you are to determine as to whether the act if committed is an impeachable offense, we respectfully submit that there must be some law governing your action by which it may be determined whether in truth and in fact an impeachable offense has been committed.

The power of impeachment, spoken of by Hamilton, as an "awful" power, if it has no limits, and the Assembly can impeach, and the Court for the trial of impeachments can convict, whenever it is deemed desirable to remove a public official, is indeed an awful power, which in times of public excitement may be misused for partisan or personal purposes. The power of impeachment without any limitations may be used to remove a political adversary for differences of political opinions, and in my own time I have witnessed such public political feeling that honest men believed that they would be doing their country a service in removing from public office those officials holding adverse political views to their own, because of their own assumed danger to the best interests of the country. If there is no limit then that power can be exercised for the purpose of removing the highest, most energetic and honest public officials, for the purpose of protecting other officials who are guilty of dishonest practices in public office, or from pursuing and exposing influential and powerful men who are not holding public office but who are directing public affairs.

Some limit must be fixed for this great power, otherwise, in the last analysis of executive government in this State, we will have a government of men and not of laws, and that there is a limitation upon the exercise of this great power, I think I shall be able to demonstrate to your satisfaction.

While there is nothing in the Constitution providing for what

causes the Court for the Trial of Impeachments may remove an official from office, yet this Court, like every other Court, is governed by the law,— it is not a law unto itself,— and when that law is not specifically set forth in the Constitution we must look elsewhere for it.

This is a Court exercising judicial functions, and no other, and the judicial function is to interpret, pronounce and enforce the law. It is the legislative function to make the law.

Is this Court to determine what a public official can be impeached for? Is it to define offenses for which an official can be removed from office, or is it to determine from the evidence whether the respondent has wilfully committed offenses defined by law, either statute or common, as impeachable offenses?

If it is to do the first, it is exercising legislative power; if the last, judicial power. It cannot exercise both. It cannot both create offenses or causes of impeachment, and then determine whether the acts of the respondent constituted the impeachable offenses thus created. Chief Judge Cullen in a dissenting opinion — and dissenting opinions very frequently set forth the law — in People v. Ahearn (196 N. Y. 253), said:

> "For the courts to declare a disqualification not enacted by the Legislature or by the Constitution, is, to use the language of Lord Chatham, not to declare the law, but to make the law."

So for this court to declare for what acts a public official may be impeached is not to declare the law but to make it.

Chief Justice Marshall in the case of Osborn v. United States (22 U. S. 865), said:

> "Judicial power, as contradistinguished from the power of the laws, has no existence. Courts are the mere instruments of the law, and can will nothing. When they are said to exercise a discretion, it is a mere legal discretion, a discretion to be exercised in discerning the cause prescribed by law; and, when that is discerned it is the duty of the court to follow it. Judicial power is never exercised for the purpose of giving effect to the will of the judge; it is always for the purpose of giving effect to the will of the legislature; or, in other words, to the will of the law."

What is the law then that is to govern this Court as to whether the matters and things set forth in these articles of impeachment that we have objected to constitute impeachable offenses?

Is it the law that a public official can be impeached and removed from office for acts committed by him before becoming an official?

No cases have been brought to our attention where a public official has been impeached, for acts committed by him while a private citizen.

It is true that in former times in England private persons were impeached for public offenses and punished for alleged offenses against the Kingdom, but since the revolution of 1688 no one has been impeached except for misconduct in office or connected with office.

All the learning and research exhibited in the trials of President Johnson, Senator Blount, Judge Barnard, Belknap, Shively and others, shed no light upon this question. In none of those cases was the question raised as to whether public officials could be impeached for acts committed while private citizens.

No case of impeachment in this country has been found where a public official has been impeached for offenses prior to his assumption of office. All are cases of misconduct in office.

In other words, for over two hundred years, including periods of political strife and animosities, when the passions of men ran high, when the pursuit of political adversaries was merciless, nowhere in the English speaking world has there been an attempt made to remove a public official from his position, by impeachment, for offenses alleged to have been committed before he became such an official.

This is powerful and persuasive evidence that the power of impeachment for offenses committed at such times does not exist, otherwise, knowing the passions and prejudices of men, we must believe it would have been resorted to.

In determining this question we must take into consideration the purposes to be accomplished by impeachment, and the laws that limit and control the proceedings.

The primary purpose of an impeachment is to remove from office an unfaithful public official.

As James Wilson says — that greatest authority upon con-

stitutional law, one of the greatest men in the convention that framed the Constitution of the United States:

> " Impeachments are confined to political characters, to political crimes and misdemeanors, and to political punishments." (James Wilson's Works, vol. 2, p. 46.)

Story in speaking of the cause of impeachment and the use in the United States Constitution of the words " treason, bribery, and other high crimes and misdemeanors," says:

> " The treason contemplated must be against the United States. In general, those offenses which may be committed equally by a private person as a public officer are not the subjects of impeachment. Murder, burglary, robbery, and indeed all offenses not immediately connected with office, except the two expressly mentioned, are left to the ordinary course of judicial proceeding, and neither house can regularly inquire into them, except for the purpose of expelling a member."
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> (Story on Constitution, Vol. 1, sec. 801.)

Woodeson declares that impeachments extend to cases in which the ordinary Courts have no jurisdiction. He says:

> " It is certain that magistrates, and officers intrusted with the administration of public affairs may abuse their delegated powers to the extensive detriment of the community, and at the same time, in a manner not properly cognizable before the ordinary tribunals. The influence of such delinquents, and the nature of such offenses, may not unsuitably engage the authority of the highest court, and the wisdom of the august assembly. The Commons, therefore, as the grand inquest of the nation, become suitors for penal justice; and they cannot, consistently either with their own dignity or with safety to the accused, sue elsewhere but to those who share with them in the legislature. On this policy is founded the origin of impeachments, which began soon after the constitution assumed its present form."
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> (Woodeson's Lectures, Vol. 2, p. 596.)

The acts alleged in the first, second and sixth articles of impeachment here presented, are none of them acts of an official, and are all acts cognizable by the ordinary tribunals, where no one may sit in judgment upon him who has been engaged in procuring evidence against him, who has prejudged his case and declared him guilty without a hearing, or who is actuated by political feeling or partisan animosity, and when if the accused is found guilty of the felony charged against him his removal from office follows automatically.

Mr. Pomeroy, one of our greatest writers upon constitutional law, in discussing the grounds of impeachment under the Federal Constitution, says:

> "If any fact respecting the Constitution is incontrovertible, it is that the convention which framed, and the people who adopted it, while providing a government sufficiently stable and strong, intended to deprive all officers, from the highest to the lowest, of any opportunity to violate their public duties, to enlarge their authority, and thus to encroach gradually or suddenly upon the liberties of the citizen. To this end elections were made as frequent, and terms of office as short, as was deemed compatible with an uniform course of administration. But lest these political contrivances should not be sufficient, the impeachment clauses were added as a sanction bearing upon official rights and duties alone, by which officers might be completely confined within the scope of the functions committed to them." (Sec. 724.)

And in discussing the phrase in the Federal Constitution of "high crimes and misdemeanors," said:

> "The phrase 'high crimes and misdemeanors' seems to have been left purposely vague; the words point out the general character of the acts as unlawful; the context and the whole design of the impeachment clauses show that these acts were to be official, and the unlawfulness was to consist in a violation of public duty which might or might not have been made an ordinary indictable offense." (Pomeroy's Constitutional Law, §§ 724–725.)

And in determining what are impeachable offenses, Story, by most persuasive reasoning, which has never been successfully refuted, demonstrates that the Court for the trial of impeachments is not a law unto itself, but is governed by the law, and in cases of impeachment under the United States Constitution, in absence of legislation by Congress, he holds that resort must be had either to parliamentary practice and the common law:

> "Or the whole subject must be left to the arbitrary discretion of the Senate for the time being. The latter is so incompatible with the genius of our institutions, that no lawyer or statesman would be inclined to countenance so absolute a despotism of opinion and practice, which might make that a crime at one time, or in one person, which would be deemed innocent at another time, or in another person. The only safe guide in such cases must be the common law, which is the guardian at once of private rights and public liberties." (Story on the Constitution, sec. 797.)

And again he says:

> "The doctrine, indeed, would be truly alarming, that the common law did not regulate, interpret and control the powers and duties of the Court of Impeachment. What, otherwise, would become of the rules of evidence, the legal notions of crimes, and the application of principles of public or municipal jurisprudence to the charges against the accused? It would be a most extraordinary anomaly, that while every citizen of every state originally composing the Union would be entitled to the common law as his birthright, and at once his protector and guide, as a citizen of the Union, or an officer of the Union, he would be subjected to no law, to no principles, to no rules of evidence. It is the boast of English jurisprudence, and without it the power of impeachment would be an intolerable grievance, that in trials by impeachment the law differs not in essentials from criminal prosecutions before inferior courts. The same rules of evidence, the same legal notions of crimes and punishment, prevail. For impeachments are not framed to alter the law, but to carry it into more effectual operation, where it might

be obstructed by the influence of two powerful delinquents, or not easily discerned in the ordinary cause of jurisdiction, by reason of the peculiar quality of the alleged crime. Those who believe that the common law, so far as it is applicable, constitutes a part of the law of the United States in their sovereign character as a nation, not as a source of jurisdiction, but as a guide and check and expositor in the administration of the rights, duties and jurisdiction conferred by the Constitution and laws, will find no difficulty in affirming the same doctrines to be applicable to the Senate as a court of impeachments. Those who denounce the common law as having any application or existence in regard to the national government must be necessarily driven to maintain that the power of impeachment is, until Congress shall legislate, a mere nullity, or that it is despotic, both in its reach and in its preceedings * * * If the common law has no existence as to the Union as a rule or guide, the whole proceedings are completely at the arbitrary pleasure of the Government, and its functionaries, in all its departments."

(Same, section 798, Vol. 1, p. 582.)

It being unthinkable that the power of impeachment should be despotic both in its reach and in its proceedings, then it must be apparent that the extent of that power must be determined by the common law or by statute.

And the great jurist further says:

"It seems, then, to be the settled doctrine of the high court of impeachment that, though the common law cannot be a foundation of a jurisdiction not given by the Constitution or laws, that jurisdiction, when given, attaches, and is to be exercised according to the rules of the common law; and that what are and what are not high crimes and misdemeanors is to be ascertained by a recurrence to that great basis of American jurisprudence. The reasoning by which the power of the House of Representatives to punish for contempts (which are breaches of privileges and offenses not defined by any positive laws) has been upheld by the Supreme Court, stands upon similar grounds; for if the

House has no jurisdiction to punish for contempts until the acts had been previously defined and ascertained by positive law, it is clear that the process of arrest would be illegal."

(Same, section 799, Vol. 1, pp. 583–84.)

And in the absence of legislation by Congress, it is now by common consent conceded that what are causes for impeachment, in addition to those specifically mentioned in the Constitution, is to be determined by the parliamentary and common law of England as it was when our Constitution was adopted, excepting so far as such parliamentary and common law is repugnant to the spirit of our institutions.

That is, what are impeachable offenses is defined by law, not by the Court for the trial of impeachments. Its only function is to determine whether the acts charged constitute impeachable offenses as defined by the law, and not by the Court itself.

What then is the law of impeachment in this State?

The power of impeachment is granted, and the tribunal to try the impeachment is provided for in the Constitution.

Constitutions primarily are only statements of principles upon which governments shall be conducted, and the distribution of the powers of government, stating by whom they shall be exercised. As a rule they are not self executing but depend upon existing laws or statutes, then in existence or thereafter to be enacted, to carry them into effect. So says the Court of Appeals in the 47 N. Y.

(People ex rel. Jackson v. Potter, 47 N. Y. 375–80.)

To illustrate, the provision of section 6, article 1, of our State Constitution, that no person shall be held to answer for a capital or otherwise infamous crime unless on presentment or indictment of a grand jury, by inference provides for indictments of persons for capital or otherwise infamous crimes by grand juries, but there is nothing in the Constitution defining what is a capital or otherwise infamous crime.

Under its provisions certainly no one would contend that a grand jury in the first instance, and a trial court finally, has the power of determining what is or is not a capital or otherwise infamous crime.

And in granting the power to impeach, and the providing of a tribunal for the trial of impeachments did not confer upon the Assembly or this Court, the power of determining what are impeachable offenses, any more than it conferred upon the grand jury or trial courts the power of determining what are capital or otherwise infamous crimes.

Standing alone those provisions are inoperative, unless as has been held, as we have heretofore shown, as to the impeachment of United States officials, resort can be had to the common and parliamentary law of England. As to our State that is put beyond question for our State Constitution has provided, in section 16, of article 1, that such parts of the common law, and of the acts of the Legislature of the colony of New York as formed the law of that colony in 1775, and such acts of the Legislature of this State as are now in force, shall be and continue the law of this State, subject to such alterations as the Legislature shall make concerning the same.

So existing laws were continued, and relied upon to put the provisions of the Constitution into force and effect, until legislation, when necessary, could be had.

The necessity for legislation to give force and effect to the provisions of the Constitution in relation to impeachment has always been recognized, and in the Constitution of 1847 it is expressly provided that, I have used '47. The Constitution of '46 taking effect in '47 I mean:

> "Provisions shall be made by law for the removal for misconduct or malversation in office of all officers, except judicial, whose powers and duties are not local or legislative, and who shall be elected at general elections, and also for supplying vacancies created by such removal."

The same direction appears in the Constitution of 1894 as section 7 of article 10.

This language is applicable to every elective State officer, except judicial and legislative. It applies to the Governor and Lieutenant-Governor, as well as to all other State officers.

It is to be further noticed that provision is to be made for removal "for misconduct or malversation in office" only. That

is, no provision is to be made for removal from office for "misconduct or malversation" out of office.

This language, by familiar rules of interpretation, excludes the Legislature from making provision for the removal of officials for anything done, or omitted to be done, by them before they became officials. It must be taken as the expression of the will of the people that public officials are only to be removed because of official misconduct, and not for acts done by them before they became public officials.

Pursuant to that provision of the Constitution the Legislature in the Code of Criminal Procedure (sections 12 to 20, inclusive, and sections 118 to 131, inclusive), has made provision for the removal of public officials, the causes for such removal, and the procedure thereon. The necessity of giving effect to the Constitution has always been recognized even in relation to the power of impeachment.

From the time of our first Constitution down to the present time, impeachments have always been provided for in the Constitution, following usually the term of the constitutional provisions.

Section 33 of the Constitution of 1777 provides:

> "That the power of impeachment of officers of the State for mal and corrupt conduct in their respective offices, be vested in the representatives of the people in Assembly, and that it shall always be necessary that two-thirds of the members present shall consent and concur in such impeachment."

That was followed up by the enactment of a statute in the same language of the Constitution itself, chapter 10 of the Laws of 1801, section 5; 1 K. & R. 182.

Article 5, section 2, of the Constitution of 1821, effective December 31, 1822, provides as follows:

> "The Assembly shall have the power to impeach all civil officers of this State for mal and corrupt conduct in office, and for high crimes and misdemeanors."

But that the majority of all the members elected shall concur in the impeachment.

That was followed up by the enactment of a statute in identical terms. Revised Statutes, pt. 1, ch. 7, tit. 2, sec. 15, 1828.

The Constitution of 1846, article 6, section 1, effective January 1, 1847, provides that:

> "The Assembly shall have the power of impeachment by the vote of a majority of all the members elected."

The present Constitution, 1894, article 6, section 13, is identical in its provisions as to impeachments with the Constitution of 1847.

In 1850, a Code of Criminal Procedure was reported by a commission, which was not enacted into the law until 1881, being the present Code of Criminal Procedure; section 17, as originally reported by the commission, is at present section 12, and reads as follows:

> "The Court for the trial of impeachments has the power to try impeachments, when presented by the Assembly, of all civil officers of the State, except justices of the peace, justices of justice courts, police justices and their clerks, for willful and corrupt misconduct in office."

It will be observed that all the Constitutions, except that of 1847 and our present Constitution, describe what officials could be impeached for.

The Constitution of 1777, "for mal and corrupt conduct in their respective offices."

The Constitution of 1821 "for mal and corrupt conduct in office, and for high crimes and misdemeanors."

These were very general descriptions of an impeachable offense, but still descriptions and definitions, leaving for the Court to determine whether the particular acts charged in the articles of impeachment constituted "mal and corrupt conduct in office," or a "high crime or misdemeanor." And in determining what was a "high crime or misdemeanor" resort had to be, in the absence of legislation, to the common or parliamentary law.

The Constitutions of 1847 and 1894 conferred the power of impeachment of public officials upon the Assembly, and created a Court for the trial of impeachments, without saying what should constitute cause for impeachment, but left that to be determined by existing law or laws to be thereafter enacted.

At the time of the adoption of the Constitution of 1847 there

was a statute, as we have heretofore seen, providing that civil officers could be impeached "for mal and corrupt conduct in office, and for high crimes and misdemeanors." (R. S., pt. 1, ch. 7, title 2, sec. 15, 1828.)

That was a definition or description in general terms of impeachable offenses under our Constitution. That statute remained the law of the State until 1881, when the Code of Criminal Procedure was adopted.

It is familiar law that Constitutions are adopted with a view to existing laws, which are continued in force, unless repugnant to the Constitution, and are relied upon to carry into effect the provisions of the Constitution.

Under the Constitution of 1847, therefore, the provisions of the Revised Statutes I have cited being in effect, a public official could be impeached for "mal and corrupt conduct in office," and that remained the law until 1881, because it was not inconsistent with the provision of the Constitution.

When the Constitution of 1894 was adopted our law provided that the Court for the trial of impeachments should have jurisdiction to try impeachments "for wilful and corrupt misconduct in office." That had been law for thirteen years.

That was, and is, a definition of impeachable offenses, and under familiar rules of interpretation exclude all others.

The authors of the Constitution are presumed to have known the existence of that law and to have depended upon it to enforce the provisions of the Constitution until some other law was enacted to take its place.

Grand juries may be authorized to indict for crimes, and assemblies to impeach, and the Courts may be created to try indictments and impeachments, but there must be some law defining and describing the crimes and offenses for which they may indict and impeach and try, and when the law has described the crime and offenses so indictable, impeachable and triable, they can indict, impeach and try no others.

When our present Constitution was being formed its authors found upon the statute book of the State a law defining impeachable offenses, limiting the power of the Court to try impeachments "for wilful and corrupt misconduct in office," but they

made no change in the phraseology of the Constitution, and they are presumed to have acquiesced in that definition and limitation. That that is so, besides the ordinary and familiar rules of construction, I have appended to my brief as a note, but it is so interesting I will read it, although I had intended it simply for the benefit of the Court without my taking the trouble to read:

That the provisions of the Code of Criminal Procedure in relation to impeachments and impeachable offenses, were considered by the authors of the Constitution of 1894 to be in harmony with that Constitution, would appear from the following facts:

Pursuant to chapter 189 of the Laws of 1890, Governor Hill appointed a commission to revise the judiciary article of the Constitution then in force. That commission was composed of some of the most prominent lawyers in the State: Judge Danforth, as chairman; James C. Carter, Frederick Coudert, William B. Hornblower, Judge Gilbert, Lewis Carr, Wilson B. Bissell, and others.

Lincoln's Constitutional History, vol. 1, pages 684–685.

After months of deliberation the Committee presented to the Legislature a completely revised judiciary article. No action was taken by the Legislature with respect to its recommendations. Many, however, of its most important suggestions were adopted three years later by the convention of 1894 and were incorporated in the new Constitution.

Lincoln's Constitutional History, vol. 1, page 721.

Two members of the Commission, Hon. Joseph H. Choate and Mr. Louis Marshall, were elected to the Constitutional Convention of 1894. Mr. Choate became the chairman of that body and Mr. Marshall a member of the judiciary committee. The latter presented to the convention for its consideration the judiciary article as framed by the Commission, and subsequently introduced the same article with various amendments. These measures, together with other proposed changes in the judiciary article, were considered by the judiciary committee of the convention for nearly five months. Every line and every word was made the subject

of the most careful thought. The statutes and decisions bearing on the judiciary article were studied and discussed.

After the convention adjourned and the revised Constitution was adopted, Mr. Choate, as president of the convention, requested Mr. Marshall, as a member of the judiciary committee, to prepare amendments to the Code of Civil and Criminal Procedure, respectively, which would harmonize their provisions with the Constitution. This mandate was accepted, and Mr. Marshall submitted to the Legislature of 1895 two bills, which were enacted as chapters 880 and 946 of the Laws of 1895.

Among the provisions of the Code of Criminal Procedure which were thus considered was Title LL of Part I, which related to the Court for the trial of impeachments. The only change made in that title was the addition of section 13 which related to the members of the Court as follows:

> "But on the trial of an impeachment against the Governor or Lieutenant-Governor, the Lieutenant-Governor cannot act as a member of the Court."

This amendment embodied in the Code the new matter added by the convention to section 13 of article VI of the Constitution. In all other respects the provisions of the Code of Criminal Procedure, including section 12, relating to the jurisdiction of the Court for the trial of impeachments, advisedly remained unchanged.

The significance of these facts which I have just recited is powerfully stated in the dissenting opinion of Judge O'Brien in People v. Helmer, 154 N. Y. 612, whose conclusions were, however, subsequently adopted by the Court of Appeals in People v. Miller, 169 N. Y. 399; the question there being, as to whether or not the limitations upon the jurisdiction of the Court of Appeals which related to appeals in civil cases, were also applicable to appeals in criminal cases. He said:

> "It is worthy of note that the lawyers in the convention who framed this section and reported it to the convention, and upon whose advice it was adopted, made no mention, either in the debate, or in any Court, of any purpose to interfere with appeals in criminal cases, while the effect it was in-

tended to have upon appeals, in civil cases was fully explained and debated; and what is still more remarkable is that a member of the judiciary committee, who was prominent in framing the section and urging its passage, is the author of two bills which he presented to the Legislature in behalf of the Bar of the State, revising both the Codes of Criminal and Civil Procedure, in order to bring them into harmony with the changes in the practice which the new Constitution, then adopted, had introduced. His work is found in chapters 880 and 946 of the Laws of 1895. These statutes, enacted for the very purpose of carrying the changes into effect, have great weight in the construction of the limitations upon appeals contained in section 9. The Code regulating the procedure in all civil cases has incorporated in it all the limitations upon appeals that are to be found in the section in the very words there used. While in the Code regulating the procedure in criminal cases, and defining the right of appeal in such cases to this Court, they have all been omitted and the practice left just as it was before. It would be impossible to conceive a weightier example of not only legislative construction, but construction by the framers of the Constitution themselves. We know that arguments drawn from like sources, but far weaker in degree, have settled disputed questions with respect to the meaning of the Federal Constitution, and, therefore, they cannot be out of place here."

The words, "for wilful and corrupt misconduct in office," it is true are very general, but they are sufficient.

It would be, as some writers have written, impossible to foresee and accurately describe all possible kinds of official misconduct that an ingenious and corrupt official might conceive and commit, and therefore, it was wiser and safer to describe the offenses in general terms, and let the Court determine whether the facts alleged and proved constitute "wilful and corrupt misconduct in office."

Of course, an act, however wilful and corrupt, committed by a private citizen cannot constitute wilful and corrupt misconduct

in office. The articles of impeachment themselves rather recognize that fact.

The articles of impeachment here presented read:

> "Resolved, That William Sulzer, Governor of the State of New York, be and he hereby is impeached for unlawful and corrupt conduct in office and for high crimes and misdemeanors."

The articles of impeachment recite that the impeachment is against him for "wilful and corrupt misconduct in his said office, and for high crimes and misdemeanors."

It will be observed that the wording of the resolution of impeachment and that the articles of impeachment are different. That neither of them follow the wording in our present statute, but it will be assumed that in substance they mean the same, and that the impeachment is preferred against him, "for wilful and corrupt misconduct in office and for high crimes and misdemeanors."

Now, I will assume that I have sufficiently considered the question of the use of the words "wilful and corrupt misconduct in office," and that impeachment must be confined to official misconduct and proceed to a brief consideration of what force is to be given to the use of the words "high crimes and misdemeanors."

It may be said, however, that he can be impeached for other crimes, and the crimes are set forth, and what I have now to say applies more particularly to the first and second article, if they are crimes then they are not indictable, and I undertake to say that the matters and things set forth in those two articles do not constitute indictable offenses. The statements and affidavits referred to in articles Nos. 1 and 2 of impeachment were voluntary, that is, not required by law. That is to say, if made under section 776 of the Penal Code, there was nothing that required him to include in his statement any list of contributions received by him, but only contributions made by him. That is all that is required by the Penal Code.

If it is claimed to have been made in compliance with provisions of the Corrupt Practices Act, then there is nothing in the provisions of the Corrupt Practices Act that requires him to

make oath to that statement. So, if under the one, if made under the one, there is no obligation for him to make a statement of any receipts; only of payments made by him or contributions made by him. If made under the other, he was not required to verify it.

I will not read you the charge — I suppose you have the articles of impeachment — for the sake of saving your time. But the first charge is that his statement did not include certain contributions; that while it recited the receipt of some contributions, that it does not set forth all the contributions he receives, and then specifies the contributions that it alleges that he received, but which he did not account for in his statement.

Charge No. 2 refers to the same statement filed by Mr. Sulzer, which it states it was his duty to file within ten days after his election, and declares that it was his duty under said statute to subscribe and swear to said statement, and it charges him both with making the same errors charged in Article No. 1, and also with committing perjury.

Inasmuch as the Election Law, article 20, known as the Corrupt Practices Law, requires a candidate to file his statement within twenty days, and does not require it to be verified, it is plain that the first charge accuses Mr. Sulzer of violating the provisions of this statute. And whereas the Penal Code, section 776, requires a candidate to file his statement within ten days, and provides also that it shall be verified, it is evident that the second charge is brought under the provisions of the Penal Code. Both charges refer to the same statement, declare that it was the duty of Mr. Sulzer under oath, under each and both of these laws to file a statement of contributions made to him during his campaign, and charge him with the violation of this duty.

Section 776 of the Penal Code reads as follows:

> "Every candidate who is voted for at any public election held within this state, shall, within ten days after such election, file as hereinafter provided, an itemized statement showing in detail all the moneys contributed or expended by him, directly or indirectly, by himself or through any other person, in aid of his election."

I will not read the balance of the section. It is unnecessary for the purpose of this discussion. This is the last clause:

> "Any candidate for office who refuses or neglects to file a statement as prescribed in this section, shall be guilty of a misdemeanor, and shall also forfeit his office."

By reference to section 780, —

Mr. Marshall (interrupting).— That was changed by subsequent amendment. That was struck out in the following year.

Mr. Herrick.— My associate says that that last clause "forfeit his office" was stricken out by amendment the following year.

That that refers only to contributions made by the candidate would seem to be enforced by a reading of section 780, "No candidate for a judicial office shall directly or indirectly make any contribution of money or other thing of value, nor shall any contribution be solicited; but the candidate for a judicial office may make such legal expenditures, other than contributions, as are authorized by section 767 of this article." So, taken together, it is evident that section only referred to contributions made by the candidate and not to contributions received by him.

What is known as the Corrupt Practices Act constituting article 20 of the Election Law, provides for the accounting and the filing of statements by political managers or treasurers of campaign funds, by individuals on their own behalf and by candidates for office.

Complete directions for the manner in which such statements shall be prepared are set forth in the section which applies particularly to the treasurer of a political committee or party, which is section 546 of that act.

Statements by others than treasurers of parties, it is provided in the last sentence of said section are to conform, so far as practicable, with the statements to be made as therein described, by the treasurers of such committees, but the said statements are not necessarily as complete, nor to cover all the items as that required from such treasuries.

The last sentence of section 546 reads:

> " That statement to be filed by a candidate or other person not a treasurer, shall be in like form as that hereinbefore prescribed, but in a statement filed by a candidate there shall also be included all contributions made by him."

That is under the Corrupt Practices Act.

If this section directed that " a statement shall be filed by a candidate in like form as that hereinbefore provided for," there can be no question but that the statement so required must contain all the items required in the statement to be made by a treasurer. But the actual wording suggests that a form of statement is prescribed in some other section, and that the Legislature intended that the items prescribed in this other section, so far as they went, should be set forth " in like form " as those provided for in the statement to be filed by a treasurer. But, naturally, the Legislature did not intend that a candidate shall set forth in his statements items not required in the specifications relating exclusively in his statement, although specifically required in the section applying to treasurers.

The expression " the statement to be filed " compels us to look back in the article to find what statement must be filed by a candidate, and this we find in sections 541 and 542 of the said article.

Section 541 requires that a candidate who " shall give, pay, expend or contribute, or shall promise to give, pay, expend or contribute, any money or other valuable thing, except for personal expenses as hereinafter provided, shall file the statement required by section 546."

This section then merely called upon the candidate to file a statement not of contributions made to him or of money paid to him, but merely of money expended by him, or contributed by him, which said statement shall be in the form provided for the treasurer of a political committee.

And even this statement may not include any money which has been expended by him for personal expenses, and such personal expenses are defined in section 542 as those incurred or paid " in connection with such election for traveling and for purposes properly incidental to traveling, for writing, printing and prepar-

ing for transmission any letter, circular or other publication not issued at regular intervals, whereby he may state his position or views upon public or other questions; for stationery, and postage, for telegraph, telephone and other public messenger service; but all such expenses shall be limited to those which are directly incurred and paid by him."

It seems apparent, therefore, that the statement required to be filed by a candidate must under the law include only payments made by him for other than personal expenses as we find above. The very fact that in the last sentence of section 546 the requirement is, that the candidate's statement shall include "all contributions made by him" emphasizes the construction placed upon this section of the Corrupt Practices Act that he was not required to file a statement of contributions made to him.

The failure to comply with the directions to file a statement of campaign payments, and possibly of receipts, does not constitute a crime under the provisions of the Corrupt Practices Act, contained in article 20 of the Election Law.

The remedy granted to the people for the failure of a candidate to file such a statement is set forth in section 550 of said act and is, so far as that act is concerned, the exclusive remedy. When a statute creates a new offense, the remedy that it provides is exclusive. That seems to be valid law. When a statute creates a new offense and makes that unlawful which was lawful before and provides a particular penalty and mode of proceeding, the penalty alone can be enforced and the offense in such a case is a purely statutory offense and cannot be established by implication; and acts otherwise innocent do not become a crime unless a clear and positive intent to make them such a crime is shown. (77 N. Y. and 137 N. Y.)

This section provides that where a candidate fails to provide a correct statement as provided therein, the Supreme Court on a written petition shall direct the candidate summarily to file or to correct such a statement as the case may be. It is the failure of a candidate to obey this direction of the Court in such a proceeding and not his failure to comply with this direction of the statute which is penalized by the infliction of a fine or by imprisonment as set forth in section 560 of said act. That pun-

ishment is for a contempt of the order of the Supreme Court and is by fine and imprisonment and is in no case a prosecution for a crime.

The act provides in the first instance that notice must be given to a careless candidate to correct his omission before he can be punished in any way.

A failure, therefore, to file a correct statement as provided by this act is not an offense of any kind as described by the laws of this State. The act plainly recognizes the possibility, perhaps the probability, of a candidate during the excitement which follows a campaign, forgetting to file a statement within the stipulated time, or if he does file a statement, of making many errors in it. It is to avoid such forgetfulness and errors that the act provides that a notice of such failure and a demand to correct them shall be made in the first instance. It recognizes that without such a notice and demand the omissions or the errors might be innocent and unintentional.

In view of thse provisions of this law it cannot be argued that the act of a candidate in failing to file a statement, or in filing an incorrect statement where he has received no notice of these mistakes and no adequate demand has been made for him to correct them, constitutes a violation of this statute.

II.

William Sulzer in swearing that his statement was complete and accurate did not commit perjury.

The attempt is made to accuse him of the crime of perjury because a portion of his statement containing items not required by the statute, was incorrect. The Penal Code, in defining perjury, states:

> "A person who swears or affirms * * * that any testimony, declaration, deposition, certificate, affidavit or other writing by him subscribed is true. * * * on any occasion in which an oath is required by law * * * or may be lawfully administered, and who * * * on such hearing, inquiry or other occasion, wilfully and knowingly testifies, declares, deposes, or certifies falsely, in any material matter, or states in his testimony, declaration, deposition, affidavit, or

certificate, any material matter to be true which he knows to be false, is guilty of perjury." (Section 1620, Penal Code.)

The entire question of perjury, therefore, rests upon the materiality of the statement in the affidavit.

"From time immemorial the common law has made the materiality of false testimony the essential ingredient of the crime of perjury. From their earliest beginning the statutes have always embodied that rule. Our penal laws but recently embodied have continued it. That in short is the unquestioned law in this state." (Section 96, Penal Code; sec. 1620, Penal Law.)

"The language of the statute is, that a person who wilfully and knowingly testifies falsely in any material matter is guilty of perjury." (People v. Teal, 196 N. Y. 376.)

"The question is raised by these exceptions whether there was a failure to prove, in respect to all or any of the numerous statements upon which perjury was assigned, that they were material to the question and issue before the court. Dunckel v. Wiles, 11 N. Y. 482. It must appear, either from the facts set forth in an indictment for perjury, that the matter sworn to and upon which the perjury is assigned was material, or it must be expressly averred, that it was material, and the materiality must be proved on the trial or there can be no conviction. A false oath upon an immaterial matter will not support a conviction for perjury. (Roscoe Cr. Rep. 728; 2 Russ. on Crimes 489)."

Wood v. People, 59 N. Y. 120–122.

"An indictment for perjury is demurrable when it alleged that in the course of the examination of an insurance company by the Superintendent of Insurance the defendant, an officer of the company, was called as a witness, that the only material question upon his examination was whether a certain contract was valid and subsisting and that he falsely, feloniously, wilfully and knowingly testified that he 'thought' the contract was a liability of the corportaion and that he 'believed' it was binding and that he 'considered' that the company owed him money thereon, each of which statements was untrue.

" The existence of the contract being alleged in the indictment, its validity and effect were questions of law, and the defendant's opinion thereon could not have been material." (Syllabus.)

" Wilfully and knowingly testified to an immaterial fact is not perjury. (People v. Teal, 169 N. Y. 372.)

" The indictment does not in words charge that any or all of the statements therein alleged to have been made by defendant were material or were of and concerning a matter material in the proceedings then being conducted by the examiner. It is not necessary that the indictment so charged, provided the facts, which are set forth therein, are sufficient in themselves to show that the sworn statements alleged to be false were material. But the materiality must be shown in the indictment itself either by direct statement or by the facts stated therein. (Wood v. People, 59 N. Y. 117, 121; People v. Gillette, 126 App. Div. 665, 672; Commonwealth v. Pollard, 53 Mass. 225, 229.) The matters upon which defendant made under oath the statements assigned as perjury were pertinent or material to any matter before the examiner for examination. Upon that examination the questions then and there (i. e. when defendant was sworn and examined as a witness) material were, as stated in the indictment, whether the contract was a liability of the corporation, whether the contract was binding upon the corporation, whether the contract was valuable, whether the corporation owed defendant upon it, and whether it represented a legal claim against the corporation. The apparent equivalent of all these questions is the single one, was the contract a valid and subsisting one? Whatever may in fact have been the object, or scope, of the examination, for the purpose of this action the indictment has limited it to this single material matter. This being so it is apparent that neither its validity nor its legal effect could be determined as a fact by ascertaining what any one, even an officer of the corporation 'thought' or 'believed' or 'considered' upon the subject. In other words, the fact of the existence of such a contract being alleged in the indictment, its validity

and effect were on the face of the indictment itself plainly questions of law, in the determination of which the defendant's opinion, or his statements sounding in opinion only could not be material. It follows that the demurrers to the indictment should have been allowed, and judgment to that effect directed." (People v. Peck, 146 App. Div. 266, 68–69.)

"To constitute perjury the false testimony must be given concerning material matter under investigation." (People v. Goeley, 126 App. Div. 671.)

"Irrelevant testimony, although false, cannot be made the basis of the charge of perjury, nor will a false oath as to superfluous or immaterial matter sustain an indictment for this offense." (38 Cyc. 1418, and cases cited.)

"Superfluous or immaterial matter stated in an affidavit for a writ of habeas corpus, although false, is not perjury." (Wharton's American Criminal Law, 5th ed., vol. 2, sec. 2228.)

The question of materiality is one that must be decided for itself in each different case. In a trial it depends upon the actual issues; in an affidavit required by law it depends upon the requirements of the statutes. Falsely swearing in an affidavit upon any matter required by the statute would constitute perjury; while falsely swearing upon matters which are not required under the law would not be a crime.

If the statement so filed by a candidate is correct, so far as it concerns the matters actually required from him by the statute, but contains incorrect statements of matters not required under the law, the statements not required by the law are immaterial, and the fact that they are incorrect will not constitute perjury although sworn to.

Nor could the charge of perjury be sustained even if the Corrupt Practices Act required a candidate to include in his statement all contributions made to him because this act does not require the statement to be sworn to. The charge of perjury is based upon section 1620 of the Penal Code. This must be coupled with section 1622. Both sections limit their application to oaths required or authorized by law.

"The oath or affidavit must be one authorized or required by law. Perjury cannot be assigned on a voluntary or extra-judicial oath." (Am. & Eng. Encyc. of Law, vol. 22, p. 685, and cases cited.)

"The taking of a mere voluntary oath that is nowhere either authorized or required by law is not perjury." (30 Cyc. 1411, and cases cited.)

"Perjury cannot be assigned of a false oath to a protest taken before a Notary Public, as part of the preliminary proofs in case of a marine loss. The oath in such a case is a voluntary and extra-judicial proceeding." (Syllabus.)

People v. Jacob Travis, 4 Parker's Crim. Rep. 213; Foreman v. Union, etc., 83 Hun, 385; People v. Ostrander, 64 Hun, 335.

"That law (id. sec. 96) declares that a false oath taken 'on any occasion in which any oath is required by law, or may lawfully be administered, is perjury,' and as a consequence an oath taken on an occasion in which it is not required, if false, is not perjury. Manifestly the meaning of the words 'law' and 'lawfully,' as used in the statute, is the hinge upon which the question turns, and, in ascertaining that meaning, both words may be considered as one, for 'lawfully' flows from, and means in pursuance of or according to, law. It is, in my opinion, well established by principle and authority that where the term 'law' is used in a penal statute it refers to the law of the State; and, applying this rule of construction to the statute (id. sec. 96), it will read: On any occasion in which an oath is required by the law of the State or may be administered in pursuance of or under the authority of the law of the State. A construction in conflict with this rule would be hostile to the theory of the foundation of the State, and destructive of its sovereignty.

"The test, therefore, is, were the acts of the defendants in swearing falsely to the certificate, acts forbidden by the law of this State? A false oath may not of itself be perjury. To make it perjury it must have been taken in a judicial or other proceeding authorized by law, or on an occasion when an oath was required by law, or must have been administered in

pursuance of or by authority of law. The oath upon which the perjury is predicated was not taken in a judicial or other proceeding authorized by law, nor on an occasion when an oath was required by, nor was it administered in pursuance of or under authority of law. The oath to the certificate was not required by the law of the State of New York, therefore it was not required by law; and since it was not required by law, and there was no authority of law for its administration, it was not lawfully administered. That the law of the State of Delaware required such sworn certificate relating to the affairs of a corporation which was its own creation is of no concern to our state, and no obligation rests upon our State to enforce the law of a foreign state relating to the affairs of a foreign corporation.

"Nor does the mere fact that the oath was administered by a duly authorized notary public of the State of New York give it validity. All oaths administered by a notary are not per se valid any more than all false oaths are perjuries. For instance, an oath of title to property, of financial condition, for the purpose of obtaining credit, of the value of merchandise or of the qualities of animals, these and many oaths in like matters may be administered by a notary, but that does not make them the subjects of perjury if false. A notary has not unlimited powers to administer oaths and by the mere act of his officiating make that perjury which is not declared by law to be perjury. If such were the rule, every falsehood, even on the most trivial rule, if expressed in the form of an oath before a notary public, would be a perjury. State v. McCarthy, 41 Minn. 59. Two things must concur to validate an oath before perjury can be assigned. The oath must be required or authorized by law, and the officer before whom it is taken must be duly qualified to administer it. If either essential be absent, there cannot be perjury." (People v. Martin, 38 Misc. Rep. 68, 71, 72.)

Inasmuch as the Corrupt Practices Act does not require a candidate to swear that his statement is correct, a false oath that is complete and correct does not and cannot constitute perjury, and a candidate could not be indicted therefor.

FINALLY.

The failure of William Sulzer to file a complete and accurate statement of all contributions made to him, and his affidavit that the statement filed by him was complete and accurate, do not constitute any offense recognizable by our laws.

First: The Election Law does not require a statement of contributions made to a candidate.

Second: The failure of a candidate to file the statement required by this act is not an offense but subjects him to a peremptory demand by a Court to perform this duty.

Third: There is no allegation that William Sulzer ever received such a demand.

Fourth: The statute recognizes a candidate's right to be given notice of errors in his statement, and his right to an opportunity to correct them. The State cannot call him to account until first it has accorded him these rights that the statute affords.

Fifth: The Penal Code does not require a candidate to file a statement of contributions made to him, and there are no other statutes on this subject.

Sixth: Incorrect statements of facts, inserted in an affidavit but not material thereto, do not constitute perjury.

Seventh: Perjury cannot be based on an oath which was neither required or authorized by law.

Eighth: As the Election Law does not require the statement to be verified, and as neither the Election Law nor the Penal Code require the candidate to insert contributions made to him there is no ground for the charge of perjury, nor for the charge of neglect of duty.

Now, as I have called to your attention, the charge in this impeachment is for wilful and misconduct in office, and for high crimes and misdemeanors.

There is no warrant in law for the use of the words "high crimes and misdemeanors."

As used in the Constitution of the United States, and formerly in our State Constitution, they were undoubtedly intended to cover all kinds of impeachable cases under the common and parliamentary law of England, but in and of themselves they are meaningless.

The late Mr. Justice Miller, of the United States Supreme Court, in his lectures on Constitutional Law, says:

> "No satisfactory definition has ever been given or generally accepted of the phrase 'for high crimes and misdemeanors.'" (p. 214.)

In the very learned brief upon impeachments prepared by the Hon. William Lawrence for the use of the managers upon the impeachment trial of President Johnson and which was revised by Mr. Butler and approved by the managers, it is said:

> "Christian, who may be supposed to have understood the British Constitution when he wrote says, 'when the words high crimes and misdemeanors are used in prosecution by impeachment the words high crimes have no definite significance but are used merely to give greater solemnity to the charge.'" (Johnson's Trial, Vol. 1, p. 176.)

That is to say, when an impeachable act was alleged, it was dignified by calling it a "high crime and misdemeanor." They were never words descriptive of any crime, and they were never used in connection with any act committed by a private citizen, and never in characterizing an act committed by a public official before he became such an official.

Whatever significance, however, was formerly attached to the words, is of no importance now. They have been dropped out of the Constitution and out of our statutes. That must be presumed to have been done designedly, and with the intention that public officials should only be impeached for the causes provided for by law, and, no longer appearing either in our Constitution or our statutes, the Assembly has no right to charge any act or acts, opinions or beliefs, committed or held either before or after holding office as "high crimes and misdemeanors," and thereby constitute them impeachable offenses.

But whatever an impeachable offense may be held to be, it can only be an offense committed by a public official while holding office.

Shortly after the adoption of the Constitution of 1847, legislative construction, the same as now contended for, was given to the power of impeachment in a case where inquiry was being

made into the conduct of certain former State officials, amongst others one named Fuller. (Lincoln's Constitutional History, Vol. 4, p. 603; also pp. 158–160 of Vol. 1, Trial of Barnard.)

It was referred to the judiciary to inquire into and report amongst other things:

> "Whether a person could be impeached and deprived of his office for misconduct or offenses done or committed under a prior form of the same or any other office."

And the judiciary committee reported:

> "That the Constitution intended to confine impeachment to persons in office and for offenses committed during the term of the office from which the person is sought to be removed."

And further:

> "2—That a person holding an elective office is not liable to be impeached under section one of article six of the constitution for any misconduct before the commencement of his term although such misconduct occurred while he held the same or another office under the previous constitution."

The report of the Judiciary Committee was approved and adopted by the Assembly. I set out the full report to the Committee.

It is not necessary to sustain our contention to go as far as did the Committee in the case of Fuller and others, in holding that a man may not be impeached after he ceases to be an official for offenses committed while he was an official. The case of Judge Barnard is not in conflict with the contention here made in behalf of the respondent. Barnard was impeached for misconduct in office, not for misconduct as a private citizen. He was impeached in the year 1872 while holding his second term of office. The charges included some for official misconduct during his first term which ended December 31, 1868, but that year he was elected for another term which commenced January 1, 1869.

Upon the trial the contention was made that he could not be impeached during his second term for acts committed during his first. A discussion upon that subject will be found at pages

151 to 191 of volume one of the Barnard trial. The managers and counsel upon the part of the prosecution were men of great industry and learning and undoubtedly produced all the authorities that could be found in any wise bearing upon the question; cases where members of Parliament, of Congress and of legislative bodies had been deprived of their seats because of prior misconduct, also the cases of Judges Cordoze and McCunn, who likewise were impeached, some of the charges being for misconduct during prior terms of office, but not a single instance, not a single case was produced where a man has been impeached for acts committed by him when a private citizen.

Of course, the cases of expulsion of members of Parliament and other legislative bodies had not the slightest bearing, because those were not cases of impeachment but of the exercise of the power of expulsion, exercised under the right that every legislative body has of judging of the qualifications and election of its own members.

At the time of the impeachment of Judges Barnard, Cordoze and McCunn, there was a statute in existence providing that the Assembly should have the power to impeach all civil officers of the State "for mal and corrupt conduct in office and for high crimes and misdemeanors."

And under the terms of that statute and the provisions of the Constitution they could have been impeached, as they were, for acts committed during a previous term and disqualified from thereafter holding office. Their misconduct was official misconduct; misconduct while in office, not the misconduct of a private citizen, and for that misconduct they could be impeached whether in or out of office.

This construction that I give of the Barnard case was given to it by the Supreme Court of Nebraska, in State v. Hill (36 Neb. —, s. c. 20 L. R. A. 573), where Judge Norval said:

> "Judge Barnard was impeached in the State of New York, during his second term, for acts committed in his previous term of office. His plea that he was not liable to impeachment for offenses occurring in the first term was overruled. Precisely the same question was raised in the impeachment proceedings against Judge Mubble of Wiscon-

sin, and on the trial of Governor Butler, of this State, and in each of which the ruling was the same as in the Barnard case. There was good reason for overruling the plea to the jurisdiction in the three cases just mentioned. Each co-respondent was a civil officer at the time he was impeached, and had been such uninterruptedly since the alleged misdemeanors in office were committed. The fact that the offenses occurred in the previous term was immaterial. The object of impeachment is to remove a corrupt or unworthy officer. If his term has expired, and he is no longer in office, that object is attained, and the reason for his impeachment no longer exists; but if the offender is still an officer, he is amenable to impeachment, although the acts charged were committed in his previous term of the same office."

That a public official can be impeached for official misconduct, although no longer holding public office, was held in the case of Belknap, who was impeached for acts committed by him while Secretary of War. He resigned from his office, his resignation was accepted, and the question was raised upon his trial as to whether he could be impeached for acts committed during his term of office after he had ceased to be such officer, and it was held that he could be; the possible punishment for misconduct being two-fold, that is, removal from office and disqualification from holding office in the future, and this latter punishment could be inflicted although he had ceased to be an official.

While such was the formal holding it is noticeable that when the question was put to the Senate as to the guilt or innocence of Mr. Belknap, nearly, if not all, of those Senators who voted for his acquittal, did so upon the ground, as stated by them, that having ceased to be a public official he could no longer be impeached.

Now, as some analogy may be attempted to be drawn between removals from office by process of impeachment and by means other than that of impeachment, it is well to consider the language of the Constitution conferring the power of impeachment and the language of section 7 of article 10, requiring the Legislature to make provision for removal for malversation and misconduct in

office, in connection with the rule laid down by Lord Mansfield in the case of Rex v. Richardson, 1 Burr. 517, as to the causes for which officers or corporators may be removed. He says:

> "There are three sorts of offenses for which an officer or corporator may be discharged:
>
> "First: Such as have no immediate relation to his office, but are in themselves of so infamous a nature as to render the offender unfit to exercise any public franchise.
>
> "Second: Such as are only against his oath, and the duty of his office as a corporator; and amount to breaches of the tacit condition annexed to his franchise or office.
>
> "Third: The third sort of offense for which an officer or corporator may be displaced is of a mixed nature, as being an offense not only against the duty of his office, but, also, a matter indictable at common law."

As to the first of these acts, acts not connected with his office, Lord Mansfield said:

"There must be a previous indictment and conviction." The reason for that is obvious, that there he has the right of trial by jury, a right to which every citizen is entitled, before he can be removed from office upon an indictable offense not connected with his office.

It will be observed that the Constitution confines the causes for which officials may be removed within much narrower limits than does the definition given by Lord Mansfield just quoted.

But even under the definition of offenses given by Mansfield, there is nothing set out in the first, second and sixth articles of impeachment that brings them within either of the definitions so given.

The first, "such as have no immediate relation to his office," where Lord Mansfield holds that there must be a previous indictment and conviction. That is to say that where the offense is not a political one or one not connected with the duties of his office, he is entitled to a trial by jury, where all his rights can be fully protected, and only after conviction, can he be removed from office. That is, that upon a conviction for felony the office held

by the person so convicted is forfeited. (Penal Law, sec. 510.) So our Penal Code provides.

> "Such as are only against his oath and the duty of his office."

Certainly there is nothing charged in the first, second or sixth articles of impeachment that are either against the oath of office of the Governor, or against the duties of his office. At the time of the alleged offenses he had no official duty to perform, no official oath to take.

> "The third sort of offense * * * is of a mixed nature * * * not only against the duty of his office, but, also, a matter indictable at common law."

That is, it must be both against the duties of his office and indictable at common law.

It should need no argument to justify the statement that receiving moneys and not accounting for them, making a false return in the statement required to be made, and swearing to it, are not offenses against the duties of the office of Governor, and unless they are, and are indictable, then they do not come within the definition of offenses as given by Lord Mansfield for which an official may be removed from office.

The making of a statement of the receipts and disbursements as a candidate, swearing thereto and filing the same, has no connection with the office to which the person has been elected or with the duties pertaining to such an office. It it a statement required to be filed by both successful and defeated candidates, and the making and swearing and filing thereof is not a condition of his entering upon the office to which the successful candidate has been elected. It is not the vestibule of office, it is not the door of entry because it is the path that must be taken by the defeated and by the successful candidate alike.

In the case of Guden (71 App. Div. 422, 30–3), Mr. Justice Bartlett, now Judge Bartlett of this Court, considers this definition of Lord Mansfield of the offenses for which an officer or corporator may be discharged, and also a considerable number of cases in this country in which was considered the question as to whether

officials could be removed for acts committed by them prior to entering upon the discharge of the duties of such office, and he finally concluded in his opinion in the Appellate Division thus:

> "In addition to the foregoing cases, which he had examined and criticised, cited in the learned and careful opinion of Mr. Justice Gaynor, I have examined all those cited in the various briefs submitted upon the argument, and while it may be conceded that courts have not infrequently expressed the opinion that the misconduct for which an officer may be removed must be committed after his accession to office, yet no actual decision has been brought to our attention which denies such power to remove for a corrupt agreement made prior to the beginning of the officer's term, which agreement can only be performed in the course of administering the office. Indeed, there is a distinct intimation the other way in State ex rel. Gill v. Common Council, 9 Wis. 254, 261, where this passage occurs in the opinion: 'We do not say that in no case could acts done during a prior term justify a removal. Thus if, after a treasurer was elected, it should be discovered that during his prior term he had committed a defalcation and been guilty of gross frauds in the management of his office, it might perhaps be just ground for removal. But where, as in this case, the charges show nothing more than a mere neglect of some formal duty which the law may have acquired, involving no moral delinquency and which, if violations of duty at all, must have been well known to the appointing power, we do not think, where they relate entirely to acts during a prior term of office, that they constitute due course of law for the remoal of an officer. For such offenses, if offenses at all, his reappointment should be regarded as a condonation.'"

It would seem that a fair construction of the learned justice's holding in that case is that where the alleged act was partially committed before entering upon the duties of his office and partially thereafter, or where it consisted, as in the Guden case, of a corrupt agreement made before, but to be carried into effect after induction into office, that that was a case for removal of the particular class of officials to which Guden belonged.

The Guden case is in some respects an instructive one, and has some bearing, other than that above indicated, upon the question now under consideration.

Guden had been removed from office by the Governor under the provisions of the Constitution providing,

> "The Governor may remove any officer, in this section mentioned, within the term for which he shall have been elected; giving to such officer a copy of the charges against him, and an opportunity of being heard in his defense."

That section includes the office of sheriff and Guden had been elected sheriff.

It will be observed that this section does not define the causes for which removals may be made, except that it clearly indicates that there must be some cause, and an opportunity to defend.

The only question to be considered in the Guden case was whether the Governor had jurisdiction to act. If he had jurisdiction, that then the courts could not review his action, and in determining whether the Governor had jurisdiction or not the question arose as to whether the acts of Guden constituted official misconduct.

The Governor in his opinion removing Guden found that he had made a corrupt promise and agreement to make certain appointments in consideration of the proposed appointees' activity and influence in securing votes for him; that such promise constituted a crime; that he violated his oath of office which required him to swear that he had not, directly or indirectly, paid, offered or promised to pay, contributed, offered or promised to contribute any money or other valuable thing as a consideration or reward for the giving or withholding of votes at the election at which he was elected, and that he had not made any promise to any one for the giving or the withholding of any such votes, and that such oath was taken by Guden before entering upon the duties of his office as sheriff, and the Governor said:

> "This act of taking the oath cannot fairly be said to be an act independent of his present official life, for this oath constituted the very initial act of taking office, an act without which he could not have assumed the duties of the office.

> Surely, when I find the power of this office so zealously guarded by the Court in order to prevent the intrusion of unfitness, open by perjury, it is my duty to arraign the intruder upon the threshold and declare that by his unlawful act in taking the office, as well as by his crime in securing it, he has disqualified himself from holding it."

That is to say, the Governor found that in the very act of entering upon his office, Guden was guilty of misconduct, guilty of a crime, at a period, to use the words of another, which is the "twilight zone," between private and official life, where it is impossible to mark the separation between the official and the non-official act.

I am asked to read to you the Constitutional oath. That is the oath that Guden took.

> "And I do further solemnly swear (or affirm) that I have not directly or indirectly paid, offered or promised to pay, contributed, or offered or promised to contribute, any money or other valuable thing as a consideration or reward for the giving or withholding a vote at the election at which I was elected to said office, and have not made any promise to influence the giving or withholding of any such vote."

When the case came before the Court of Appeals, the learned justice writing the principal opinion evidently considered that a much broader power was conferred upon the Governor by this section than was given to Courts of Impeachment, as is indicated by the following language:

> "The suggestion that, if the Courts do not interfere, some chief executive may proceed in disregard of those principles which courts of impeachment have established, should not be given weight, for the ability to act quickly in the removal of administrative officers and clerks is as important in the conduct of government as in the management of a gigantic corporation or large individual enterprise. The attempt to safeguard the rights of the official or the clerk should not be carried to such an extent as to override the interests of the public, for the public business is of paramount importance. * * * * Hence, in their wisdom, the framers of the Con-

stitution put the public interests in the foreground, and provided a simple and prompt method of removal of county executive officers by the Governor of the State."

When the case came before the Appellate Division it was said by counsel for both parties that the Court possessed the powers of determining whether the Governor had acted within his jurisdiction or not; and, in considering that question, and the nature of the charges brought against Guden, upon which the Governor acted, and the findings of the Governor thereon of a corrupt agreement made before election, but to be performed afterwards, the Court said:

"Furthermore, it is to be observed that the corrupt agreement alleged in the particular charge now under consideration related not to a time preceding the election and qualification of the officer, but that it was impossible of execution until he should become vested with the title of the office, thus recognizing the fact that it must be an official act. In other words, it was a corrupt agreement, the time of performing which was necessarily postponed to a period when he should become a public officer. In this respect the case differs, I think, from any of those cited by counsel or in the opinion below. * * * Whatever the conclusion might be, if the acts committed before Guden entered into office had no direct relation to his subsequent official conduct, I am of the opinion that a corrupt promise, made before election, to exercise his official powers in a particular way, affords a sufficient basis in law for the removal of the officer by the Governor, under section 1 of article 10 of the Constitution. It seems to me that the relation of the promise to the subsequent official tenure is so close as to make the act of entering into such a corrupt agreement affect the usefulness of the officer as clearly and directly as could any official misconduct committed wholly after the official term began."

When the case came to the Court of Appeals two opinions were written, one by the then Chief Judge and one by Judge O'Brien. The Chief Judge in his opinion did not consider the question as to whether the charges against Guden were acts committed before

or after, or partially before and partially after, he entered upon the discharge of the duties of his office, but placed the decision upon the grounds that the power of removal was an executive power vested in the Governor with the exercise of which power the courts would not interfere. In Judge O'Brien's opinion he states:

> "It is admitted on all sides that before a removal can be made the Governor must acquire jurisdiction. There must be a charge of some official misconduct on the part of the officer and he must have been served with a copy of the charge and given an opportunity to be heard. A mere statement, in writing, of some act or omission on the part of the officer, that in no sense can constitute misconduct would not be a charge within the meaning of this provision of the Constitution. It is not necessary that the charge be stated with all the precision of a pleading in a court of law or equity. The Governor has power to prescribe his own rules of procedure and determine whether the charge is sufficiently specific or otherwise, but there must be some act or omission on the part of the officer stated in the papers, which amounts to official misconduct, and when such a paper is presented to the Governor he acquires jurisdiction of the person of the officer and of the subject matter of the charge. For any error of law or fact that he may commit in the progress of the investigation there is no power of review in the courts. The courts can inquire with reference to a single question only and that is the jurisdiction; but the power to inquire as to jurisdiction necessarily implies the right to examine the nature and character of the charge, in order to see whether it is in any proper sense a charge at all within the meaning of the Constitution.
>
> "In my opinion, the charges in this case were sufficient to confer jurisdiction upon the Governor. In one of the charges presented to him and which appears in the record it is, in substance, alleged that the sheriff abdicated his powers and duties with respect to the appointment of his subordinates to an irresponsible body of men called a patronage committee. That is to say, he entered into an agreement

with this committee to make such appointments of such subordinates as it determined upon, and that a list of forty persons was furnished to him by this committee to be appointed as his subordinates and that he appointed them. The appointment of these persons, under such circumstances, was an official act relating to the powers and duties of his office."

171 N. Y. 536–37.

So that it is fair to assume that in both the Appellate Division and in the Court of Appeals it was held that at least one of the charges against Guden was an act committed either partially or wholly after he had been inducted into office, and, therefore, was official misconduct.

The true significance of the Guden case, however, is that even under the very broad power of removal granted to the Governor by the section of the Constitution we have cited, having no limitations upon it such as expressed in section 7 of article 10 of our present Constitution, and being much broader, as intimated by the chief judge of the Court of Appeals, than the power of impeachment, it was still held that that power is not unlimited, but is one limited and regulated by law, and that a cause for removal must be at least one connected with office and not separate and apart therefrom; and that when such a charge is made, and only then, will the Court refuse to review the action of the Governor in determining that such charge had been sustained, and removing the accused official from office.

It would be a useless display of learning and industry to review all the cases bearing upon the subject of removal from office in this and other states. That has been done to a considerable extent in the very learned opinion of Mr. Justice Bartlett already referred to. Suffice it to say that we have been unable to find a single case in this State where a public official has been removed from office for acts committed by him while a private citizen and not a public official. The nearest approach thereto being that of Guden, which we have just discussed; and the language of section 7 of article 10 of the Constitution, heretofore quoted, in unmistakable terms provides that the only offenses for which an official may be removed is "misconduct or malversation in office" not "misconduct or malversation" out of office.

Without further continuing this discussion it is respectfully submitted that this Court should so interpret the law as to confine impeachable offenses to " wilful and corrupt misconduct in office," and not to extend it further than it has ever before been extended in this country or in England for over two hundred years, so as to include offenses committed by a private citizen before he became a public official.

To so extend it is to make the impeaching power a truly " awful " power. No statute of limitations will run against it. An upright and honest official may have an unfortunate past not known to the general public; a past that has been lived down and atoned for; that yet may be dug up by partisan malice, by an unscrupulous majority, and made use of to at least suspend him from office indefinitely; which may be known to corrupt and unscrupulous political leaders who place him in public office, and then with threats of exposure endeavor to coerce him to abuse the power of his office, and failing in that cause him to be impeached, in form, for crimes and offenses committed out of office, but in fact for his refusal to commit crimes while in office.

I cannot, I will not, believe that this great court will set precedent that will extend the law beyond what is written, and place the honest public official, who may have erred, at the mercy of blackmailers and scandal mongers, political or otherwise, but will confine the power of impeachment to its primary purpose of removal from office of an unfaithful public official for misconduct in office only, leaving to the ordinary tribunals of justice his punishment for crimes committed while he was a private citizen.

Now, pursuant to the permission of the Court heretofore granted, Senator Hinman will read Judge Vann's brief.

The President.— Come on the platform.

Mr. Hinman.— May it please your Honor:

As the Constitution does not define impeachable offenses, can the Legislature define them?

The Constitution gives the Assembly the power to impeach and the Senate and Judges of the Court of Appeals the power to try impeachments, but does not attempt to specify the offenses for which impeachment will lie. The Legislature, however, has

assumed to do so by section 12 of the Code of Criminal Procedure, which limits the grounds of procedure to "wilful and corrupt misconduct in office."

Section 37 of the Penal Law, entitled "Proceedings to Impeach Preserved," simply effects the object of the title. It provides that, quoting,

> "The omission to specify or affirm in this chapter any ground or forfeiture of a public office * * * or any power conferred by law to impeach, remove, etc., * * * any public officer * * * does not affect such forfeiture or power,"

The Judiciary Law simply makes the Court for the Trial of Impeachments a Court of Record. (Section 2.)

The object of impeachment is the removal of a public officer for the protection of the people, but not to punish the incumbent. Even the disqualification to hold office afterward, when imposed, is rather to prevent than to punish. The provision that the officer removed shall still be liable to indictment and punishment in the criminal courts, shows that the object is not penal, for otherwise he could be punished twice for the same offense, citing the Constitution, article 6, section 13.

Impeachment, however, is a criminal proceeding, and the defendant is entitled to every reasonable doubt and to a strict construction. (Trial of Judge Barnard, vol. 1, p. 214; Nebraska v. Hastings, 37 Neb. 96–119.)

When the Constitution is silent as to what offenses may be cause for impeachment, recourse must of necessity be had to the common law and precedent, for otherwise every department of government would be at the mercy of the Assembly and the Court of Impeachments.

According to the weight of authority, impeachment, not regulated by Constitution or statute, will lie only for misconduct in office or for a crime either statutory or at common law. When the Constitution does not speak on the subject a statute may regulate it by providing what is an impeachable offense by enlarging or narrowing the scope established by precedents. The Legislature can change the common law on any subject unless restrained

by the Constitution. It can abolish common law crimes, as it has in this State. (People v. Knapp, 206 N. Y. 373; Penal Code, sec. 2; Penal Law, sec. 22.) It can create new crimes by making acts criminal which were innocent at common law. If the Constitution had enumerated certain impeachable offenses, as our earlier Constitutions did, the Legislature probably could neither add nor take away. As it did not, the Legislature may place reasonable limitations on the broad power conferred so as to regulate its exercise. It could enact, for instance, in accordance with previous Constitutions, many precedents and ancient tradition that the power should be limited to misconduct in office and to high crimes and misdemeanors. It could exclude from consideration by the Court petty crimes whenever committed, such as the violation of city ordinances or of the Game Law and the like. It could exclude any act not involving moral turpitude. There is now no crime known to our law except as defined in the Penal Code, the brief says. That should be in the statute. It is an error in printing. As the Legislature passed the Penal Code it can repeal it, even without restoring the common law on the subject. In case it should do so there would be no high crime or misdemeanor and nothing except, perhaps, misconduct in office would be left for the Court to act upon. This would be a practical limitation of the power of the Court, if the Legislature could do it, absurd as it is to think it would do it.

The Legislature has undoubted power to pass an act of limitations applying to both civil and criminal actions based on the lapse of time, and such an act, many of which have been passed, would be binding upon all Courts, including the Court of Impeachments. Otherwise, that Court would be a law unto itself, which the framers of a Constitution aimed to prevent the exercise of arbitrary power by any branch of the State government, could not in reason have intended. Therefore, it must be conceded that the Legislature has some power to limit the action of the Court in convicting and removing from office. The limitation itself has limitations in turn, for obviously the Legislature cannot so limit as to substantially defeat the power of the Court. Where is the line to be drawn? Clearly according to the rule of reason. A reasonable limitation is within, an unreasonable limitation is

without the power of the Legislature. Construction that there is no power to limit would be unreasonable; construction that there is absolute power to limit would also be unreasonable; and the true construction lies between these two contentions.

Aid to construction is found in preceding Constitutions and in precedents. The Constitution of 1777 gave quoting:

> "The power of impeaching all officers of the State for mal and corrupt conduct in their respective offices." (Section 33.)

This is substantially the same as section 12 of the Code of Criminal Procedure.

The Constitution of 1821 enlarged the power by giving the right to impeach "for mal and corrupt conduct in office and for high crimes and misdemeanors." (Art. 5, section 2.)

The Revised Statutes of 1830 followed the language of the Constitution of 1821. (1 R. S. 456.)

The Constitution of 1846 gave the power of impeachment without enumerating or describing the offenses for which impeachment would lie. It omitted the words of definition contained in the two preceding Constitutions.

The judiciary article prepared by the Convention of 1867, and adopted in 1869, simply continued the provision of the Constitution of 1846, giving no definition.

Our present Constitution also fails to give any definition, but it is significant that when the Constitution of 1894 was framed and adopted, the Code of Criminal Procedure was in force, it having been passed on the 1st of June, 1881, and section twelve has stood without change ever since. The framers of our present Constitution, therefore, found a statute in force limiting impeachable offenses to wilful and corrupt misconduct in office. If not satisfied with that limitation would they not have changed it? As they made no change of the provisions in the Constitution of 1846 or 1867 on the subject, does not the presumption arise that they were satisfied with the limitation and definition already prescribed by statute, or were at least willing to leave the matter to the Legislature? When the Constitution confers a power in general terms without attempting to define or limit it in any way,

it is open to the Legislature to define and limit, provided they do not infringe in some substantial way upon the general power itself. Certainly there is nothing in the Constitution forbidding it, and as constitutions enumerate rather than define, the Legislature may define and in defining limit, providing they do not in effect abolish. The Legislature has all the power of legislation there is, except as restrained by the Constitution, and the Constitution does not expressly restrain the Legislature from defining impeachable offenses.

There is no reason for holding that the Constitution impliedly prohibits definition and limitation by the Legislature, because having failed to define or limit itself and obviously not intending to allow the Court of Impeachments to be a law unto itself, or give it the right to hold every important public officer at its mercy, it necessarily left it either to the Court, guided by precedent, which means by the common law, or to the Legislature, which can abolish the common law and substitute other provisions therefor. Conceding that if the Legislature does not act, the Court of Impeachments necessarily has control of the subject, when the Legislature has acted in a perfectly reasonable way, its action is binding upon all courts. Otherwise we should have the rule that the Legislature may make a law binding on all courts but one, leaving that to be guided by its own discretion, although it consists in the main of legislators liable to be influenced by partisan considerations. If the Legislature should provide that the violation of any city ordinance should be a misdemeanor punishable by fine and imprisonment, could it not add the limitation that it should not constitute an impeachable offense? Is not this what it has done in principle and effect by making a multitude of acts crimes but providing that only wilful and corrupt misconduct in office shall be a crime for which impeachment will lie?

The definition of the Legislature is reasonable, because it is strictly in line with the object of impeachment, which is simply to protect the State by the removal of a public officer.

The Public Officers Law, following the Revised Statutes, provides that "Every office shall be vacant upon the happening of either of the following events; * * * 3. His removal from office." (Public Officers Law, sec. 30; 1 R. S., 5th ed., 456.)

This is doubtless what is referred to by the words "His removal from office" in section 6 of article 4 of the Constitution, and both undoubtedly refer, in part at least, to the automatic removal from office by conviction for a felony under existing statutes.

The Legislature could have provided that misconduct wholly outside of the functions of office should be cause for impeachment, such as habitual drunkenness, gross immorality, or the commission of any crime involving moral turpitude. It did not do so, but, on the other hand, under its power to define and regulate the exercise of the power conferred, it limited impeachable offenses to wilful and corrupt misconduct in office. If the Legislature could not do this many of its statutes are void. The Governor is commander-in-chief of the military and naval forces of the State (Constitution, art. 4, sec. 4), but is the Military Law void in so far as it regulates his duties as such? Cannot the Legislature provide what the Governor may do in time of war or may not do in time of peace, provided it does not trench upon his general power as commander-in-chief?

The Supreme Court has general jurisdiction in law and in equity (art. 6, sec. 1) but are all the statutes void which regulate and limit the exercise of this power by adding to, taking away, and the like. The police power is not created by the Constitution, and is in apparent conflict with many of its provisions, yet, as its exercise is not expressly forbidden, it is held to exist and even to underlie that instrument.

The Constitution prohibits the State from giving away its money, but statutes authorizing the payment of claims not sanctioned by law, although sanctioned by morals, are held to be within the power of the Legislature. (Cayuga County v. The State, 153 N. Y. 279–283; art. 8, sec. 9.) How can this be unless the Legislature can regulate the subject? Many other decisions to the same effect bear directly on the legislative power which is the subject under discussion. The Assembly now presents certain articles in defiance of a statute passed by the Legislature of which it is an inherent part.

We are under government by law and the Legislature is the law-making power. Should we be under a government by law if the power to define impeachable offenses, involving such grave con-

sequences, were left wholly to the arbirtrary discretion of a Court? There is no middle ground, either the Legislature has power to make law on this subject, as it has on most others, or the court is a law unto itself, not simply in matters of procedure, but in matters of substance also. It could convict the Governor of the State and remove him from office because he stole cherries when a boy or spat on the sidewalk when a man. It could convict for acts not criminal, either in law or morals, and there would be no remedy, for there is no appeal from the judgment of the Court of Impeachment. Have we a Court in this State which is wholly beyond the reach of legislation and which cannot only enforce law but make directions, and it can at will lawfully adjudge that the wholesale theft of money from the State treasury, or the sale of appointments, or even treason and rebellion are not impeachable offenses? Either there is no limit to its power or the Legislature within reasonable limits can define its power as it has by a statute which, as re-enacted without substantial change, has stood for more than thirty years with no complaint or question, although a constitutional convention has been held since its passage.

A statute defining and regulating the subject, passed more than eighty years ago, though not now in force, shows when considered with the statute passed fifty years later, which is in force, that for nearly three generations it has been the general understanding that the Legislature has the power to define and limit. This is a practical construction of great value, entitled, as the Courts hold, to controlling weight. (Chicago v. Sheldon, 9 Wall. 50, 54; People ex rel. Williams v. Dayton, 56 N. Y. 367; City of New York v. N. Y. City Railroad, 193 N. Y. 543, 549.)

Power to legislate is not granted by the Constitution, but underlies it and is supreme except as restrained by the fundamental law. Presumption always favors the validity of a statute, and no law should be adjudged unconstitutional unless it is so beyond doubt. Where is restraint found in the present Constitution. Nowhere, unless the grant of a power in general terms, of itself, restrains the Legislature from regulating the exercise of the power.

The action of the Court on the trial of Judge Barnard is not in conflict with these views, because that trial took place in

1872, years before the Code of Criminal Procedure was passed defining impeachable offenses. At the date of the Barnard trial there was no statute on the subject, unless the Revised Statutes were in force, which gave the right to impeach for mal and corrupt conduct in office and for high crimes and misdemeanors. The Code of Criminal Procedure had not been passed when Samuel J. Tilden wrote his celebrated opinion at the request of the Senate in 1868, and hence, his views on this question do not apply to the subject now under consideration, though it may be remarked that in other respects they are in substantial accord with the views herein expressed (Tilden's Public Writings, Vol. 1, p. 474). The same is true of the noted discussion of impeachment by Judge Theodore Dwight in 6 American Law Register, 257, 641, and of other articles in law periodicals published at about the time of the trial of Judge Barnard.

This question is earnestly pressed upon the attention of the Court, not only on account of its importance at the present trial, but also on account of its importance in the future, for the action of the Court may be followed by grave consequences affecting the welfare of the State for generations.

Mr. Cox.— Shall we distribute to the Court now copies of the argument just read?

The President.— I think so.

(Copies of argument distributed to the Court.)

Mr. Brackett.— With the permission of the Court: The articles here charge impeachable offenses — if proven as set out they require a verdict of guilty from this Court. Briefly summarized, the first article charges the filing of a false statement of contributions to the defendant and expenditures by him, while a candidate for Governor, in violation of the Election Law.

The second, the same, in violation of the Penal Law, and perjury in making oath to the correctness of such statement.

The sixth, the remainder of the three under attack by this pleading, charges larceny by the defendant in having converted and appropriated to his own use campaign contributions made to him by various persons named.

It will be seen, therefore, that all of the three articles thus challenged by this pleading charge the defendant with crimes.

We are not now arguing the completeness or sufficiency of forms of the articles, but the broader question of what constitutes impeachable offenses, and whether, the form of the article being held good in whole, or in part, and the facts charged proven, the defendant is guilty of offenses for which impeachment may be had.

Whenever an impeachment trial has been had in this western hemisphere, there has arisen the perpetually recurring question, "What is an impeachable offense?"

The question has, and always, developed violently antagonistic opinions. On the one hand has been the claim that nothing but indictable crimes are grounds of impeachment and that the proceeding is highly penal and subject to all the strictness of procedure of the criminal law. On the other extreme is the contention that impeachment is not a prosecution for crime at all, but a mere inquest of office, a political prosecution pure and simple, instituted solely for the protection of the government, or of the State. There is room for much of research, and very curious learning might be exhibited by one who cares to go exhaustively into the distant history of the general subject, and the precedents. The arguments on either side of the question are endless. But no attempt at detailed examination will here be made on behalf of the Managers. The brief of Judge William Lawrence, revised by General Butler, on the one hand, and the arguments of Judge Benjamin R. Curtis and Mr. Evarts on the other, on the trial of President Johnson, have rendered much research back of the time of the Johnson trial largely supererogatory, if not distinctly useless, on the subject of what constitutes offenses for which impeachment may be had.

No one with any pretensions to a knowledge of the constitutional or legal history of the country can fail to feel assurance from the great names of those who argued, that every possible phase of the question was discussed and that every authority then existing and pertinent was cited and analyzed.

In the Lawrence-Butler brief on the Johnson trial, an impeachable offense is thus defined:

> "We define, therefore, an impeachable high crime or misdemeanor to be one in its nature of consequences subversive of some fundamental or essential principle of government or highly prejudicial to the public interest, and this may consist of a violation of the Constitution, of law, of an official oath, or of duty, by an act committed or omitted, or, with violating a positive law, by the abuse of discretionary powers from improper motives, or for any improper purpose."

Another most valuable contribution to the question was made by the House Judiciary Committee in 1912 in the Archibald case. In this report Judge Clayton argues from the lectures of Richard Wooddesson in Law Lectures delivered in Oxford in 1777 (vol. 2, pages 355–358) that the influences of magistrates and officers intrusted with the administration of public offices, and the abuses of their delegated powers "may not unsuitably engage the authority of the highest court and the wisdom of the sagest assembly." The Commons, therefore, as the grand inquest of the nation, became suitors for penal justice and they cannot consistently, either with their own dignity or with safety to the accused, sue elsewhere but to those who share with them in the Legislature. On this policy is founded the origin of impeachments.

On the functions of impeachment, quotation is made by Clayton from Rawle on the Constitution (p. 211):

> "The delegation of important trusts affecting the higher interests of society, is always from various causes liable to abuse. The fondness frequently felt for the inordinate extension of power, the influence of party and of prejudice * * * are sometimes productions of what are not unaptly termed 'political offenses' which it would be difficult to take cognizance of in the ordinary course of judicial proceeding."

And this from Story (5th ed., vol. 1, p. 584):

> "One cannot but be struck, in this slight enumeration, with the utter unfitness of the common tribunals of justice to take cognizance of such offenses, and with the entire propriety of

confiding the jurisdiction over them to a tribunal capable of understanding and reforming and scrutinizing the policy of the state, and of sufficient dignity to maintain the independence and reputation of worthy public officers."

The report of Judge Clayton then continues:

"The term 'misdemeanor' has a two-fold legal significance. Under the common law it signifies a criminal offense, not amounting to felony, which is punishable by indictment, or other special criminal proceeding. As applied to civil officers, in the sense of the lex parliamentaria it signifies mal administration or misbehavior in office, irrespective of whether such conduct is or is not indictable. It is well established by the authorities that impeachable offenses under the British Constitution and under our Constitution are not limited to statutable crimes and misdemeanors, or to offenses indictable under the common law and triable in the courts of ordinary jurisdiction."

In his Commentaries on the Constitution, the learned John Randolph Tucker defines impeachable offenses as follows (vol. 1, sec. 200), giving only part of the definition, beginning now with his third subdivision:

"High crimes and misdemeanors. What is the meaning of these terms? Much controversy has arisen out of this question. Do these words refer only to offenses for which the party may be indicted under the authority of the United States? Do they mean offenses by the common law? Do they include offenses against the laws of the States, or do they mean offenses for which there is no indictment in the ordinary courts of justice? Or do they include mal administration, unconstitutional action of an officer wilful or mistaken, or illegal action wilful or mistaken?"

Coming down again to subdivision g:

"* * * Again, if the judge is drunken on the bench this is ill behavior, for which he is impeachable. And all of these are generally criminal, or misdemeanor—for misdemeanor is a synonym for misbehavior. So, if he omits a

judicial duty, as well as when he commits a violation of duty, he is guilty of crime or misdemeanor; for, says Blackstone, 'crime or misdemeanor is an act committed or omitted in violation of a public law either forbidding or commanding it.'"

Thereupon, at 12:30 P. M., the Court declared a recess until 2:30 P. M.

AFTERNOON SESSION.

The Crier.— The Judges of the Court of Impeachment.

The President.— Call the roll.

The roll call showed a quorum present, with the following absentees:

Senator Brown.
Senator Emerson.
Senator Fitzgerald (excused).
Judge Gray.
Senator McClelland.
Senator Thomas.
Senator Thompson.
Senator Walters.
Senator Whitney.

The Clerk.— A quorum is present.

Senator Pollock.— Mr. President.

The President.—As soon as Court is open, we will hear you.

The Crier.— Hear ye, hear ye, hear ye, this Court resumes its session from recess.

The President.— Now, if you please, Senator.

Senator Pollock.— I just want to have my presence noted. My name was not called.

The President.—Yes. Have any other gentlemen come in since the Clerk first called the roll? If so, they will please rise and give their name to the Clerk.

Senator Brackett, if you will resume your argument.

Senator Wende.— Mr. President, please record my presence.

The President.— The Clerk will record Senator Wende's presence. Is there still any other gentleman who has come in since the roll call?

Mr. Brackett.— With the permission of the Court, I was reading from the Commentaries on the Constitution by John Randolph Tucker. Continuing and quoting from that work:

> "To confine the impeachable offenses to those which are made crimes or misdemeanors by statute or other specific law, would too much constrict the jurisdiction to meet the obvious purpose of the Constitution, which was by impeachment to deprive of office those who by any act of omission or commission showed clear and flagrant disqualification to hold it."

With the permission of the Court, I will read the last three lines again.

> "* * * would too much constrict the jurisdiction to meet the obvious purpose of the Constitution which was, by impeachment, to deprive of office those who by any act of omission or commission showed clear and flagrant disqualification to hold it."

Cooley, in his Principles of Constitutional Law, says:

> "The offenses for which the president or any other officer may be impeached are such as in the opinion of the House are deserving of punishment under that process. They are not necessarily offenses against the general laws. In the history of England, where the like proceeding obtains, the offenses have often been political, and in some cases for gross betrayal of public interests punishment has very justly been inflicted on cabinet officers."

I recall one case that is cited where a trial was had for administering medicine to the king without the prescription of a doctor.

> "It is often found that offenses of a very serious nature by high officers are not offenses against the criminal code,

but consist in abuses or betrayals of trust, or inexcusable neglects of duty, which are dangerous and criminal because of the immense interests involved, and the greatness of the trust which has not been kept. Such cases may be left to be dealt with on their own facts and judged according to their own apparent deserts."

George Ticknor Curtis, in his work, says this (vol. 1, pp. 481–482):

"Among the separate functions assigned by the Constitution to the Houses of Congress are those of presenting and trying impeachments. An impeachment, in the report of the committee of detail, was treated as an ordinary judicial proceeding and was placed within the jurisdiction of the Supreme Court. That this was not in all respects a suitable provision will appear from the following considerations: Although an impeachment may involve an inquiry whether a crime against any positive law has been committed, yet it is not necessarily a trial for crime, nor is there any necessity, in the case of crimes committed by public officers, for the institution of any special proceeding for the infliction of the punishment prescribed by the laws, since they, like all other persons, are amenable to the ordinary jurisdiction of the courts of justice in respect of offenses against positive law. The purposes of an impeachment lie wholly beyond the penalties of the statute or the customary law. The object of the proceeding is to ascertain whether cause exists for removing a public officer from office. Such a cause may be found in the fact that either in the discharge of his office or aside from its functions he has violated a law or committed what is technically denominated a crime. And I shall presently, I hope, demonstrate that in that very statement of the functions it will result in a total destruction of the claim which our friends make here. 'But a cause for removal from office may exist where no offense against positive law has been committed, as where the individual has, from immorality or imbecility or mal administration, become unfit in the exercise of the office.' The rules by which an impeachment is to be determined are therefore peculiar and are not

fully embraced by those principles or provisions of law which courts of ordinary jurisdiction are required to administer."

Watson, in his work on the Constitution, phrases it thus (vol. 2, p. 1034):

"A misdemeanor comprehends all indictable offenses which do not amount to a felony, as perjury, battery, libels, conspiracies, attempts and solicitations to commit felonies, etc. These seem to be the definition of these terms at common law, but it would be strange if a civil officer could be impeached for only such offenses as are embraced within the common law definition of 'other high crimes and misdemeanors.' There is a parliamentary definition of the term 'misdemeanor,' and a modern writer on the Constitution has said: 'The term "high crimes and misdemeanors" has no significance in the common law concerning crimes subject to indictment. It can only be found in the law of parliament and is the technical term which was used by the Commons at the Bar of the Lords for centuries before the existence of the United States.' Synonymous with the term 'misdemeanor' are the terms misdeed, misconduct, misbehavior, fault, transgression."

Again (vol. 2, pp. 1036, 1037):

"A civil officer may so behave in public as to bring disgrace upon himself and shame upon his country, and he may continue to do this until his name would become a national stench, and yet he would not be subject to indictment by any law of the United States, but he certainly could be impeached * * *.

"It is not essential that an offense should be committed in an official capacity in order that it may come within the purview of the constitutional provisions relating to impeachments."

Story, of whom some of you will remember Wendell Phillips says that if ever there was anyone a little crazy on the subject of the independence of the judiciary it was Joseph Story — said this (5th ed., vol. 1, secs. 796–799):

"Is the silence of the statute book to be deemed conclusive in favor of the party until Congress have made a legislative

declaration and enumeration of the offenses which shall be deemed high crimes and misdemeanors? If so, then, as has been truly remarked, the power of impeachment, except as to the two expressed cases, is a complete nullity, and the party is wholly dispunishable, however enormous may be his corruption and criminality."

"Congress has unhesitatingly adopted the conclusion that no previous statute is necessary to authorize an impeachment for any official misconduct and the rules of proceeding, and the rules of evidence, as well as the principles of decision, have been uniformly regulated by the known doctrines of the common law and parliamentary usage. In the few cases of impeachment which have hitherto been tried, no one of the charges has rested upon any statutable misdemeanor."

In the American and English Encyclopaedia of Law, second edition (vol. 15, pp. 1066–1068) we find this:

"The Constitution of the United States provides that the President, Vice-President and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors. If impeachment in England be regarded merely as a mode of trial for the punishment of common law or statutory crimes, and if the Constitution has adopted it only as a mode of procedure, leaving the crimes to which it is to be applied to be settled by the general rules of criminal law, then, as it is well settled that in regard to the national government there are no common law crimes, it would seem necessarily to follow that impeachment can be instituted only for crimes specifically named in the Constitution or for offenses declared to be crimes by a Federal statute? This view has been maintained by very eminent authority, but the cases of impeachment that have been brought under the Constitution would seem to give to the remedy a much wider scope than the above rule would indicate. In each of the only two cases of impeachment tried by the Senate in which a conviction resulted the defendant

was found guilty of offenses not indictable either at common law or under any Federal statute, and in almost every case brought, offenses were charged in the articles of impeachment which were not indictable under any Federal Statute, and in several cases they were such as constituted neither a statutory nor a common law crime. The impeachability of the offenses charged in the articles was in most of the cases not denied. In one case, however, counsel for the defendant insisted that impeachment would not lie for any but an indictable offense; but after exhaustive argument on both sides this defense was practically abandoned. The cases then, seem to establish that impeachment is not a mere mode of procedure for the punishment of indictable crimes; that the phrase 'high crimes and misdemeanors' is to be taken, not in its common law, but in its broader parliamentary sense, and is to be interpreted in the light of parliamentary usage; that in this sense it includes not only crimes for which an indictment may be brought, but grave political offenses, corruption, mal administration, or neglect of duty involving moral turpitude, arbitrary and oppressive conduct, and even gross improprieties, by judges and high officers of State, although such offienses be not of a character to render the offender liable to an indictment either at common law or under any statute. Additional weight is added to this interpretation of the Constitution by the opinions of eminent writers on Constitutional and Parliamentary law and by the fact that some of the most distinguished members of the convention that framed it have thus interpreted it."

Black, in his work on Constitutional Law, says thus (2nd ed. pp. 121–122):

"Treason and bribery are well defined crimes. But the phrase 'other high crimes and misdemeanors' is so very indefinite that practically it is not susceptible of exact definition or limitation, but the power of impeachment may be brought to bear on an offense against the Constitution or the laws which, in the judgment of the House, is deserving of punishment by this means or is of such a character as to

render the party accused unfit to hold and exercise his office. It is, of course, primarily directed against official misconduct. As has been argued, any gross malversation in office, whether or not it is a punishable offense at law, may be made the ground of an impeachment. But the power of impeachment is not restricted to political crimes alone. The Constitution provides that the party convicted upon impeachment shall remain liable to trial and punishment according to law. From this it is to be inferred that the commission of any crime which is of a grave nature, though it may have nothing to do with the person's official position, except that it shows a character or motives inconsistent with the due administration of his office, would render him liable to impeachment. It will be perceived — I still quote from Black — that the power to determine what crimes are impeachable rests very much with Congress. For the House, before preferring articles of impeachment, will decide whether the acts or conduct complained of constitute a 'high crime or misdemeanor.' And the Senate in trying the case, will also have to consider the same question. If, in the judgment of the Senate, the offense charged is not impeachable they will acquit; otherwise, upon sufficient proof and the concurrence of the necessary majority, they will convict. And in either case there is no other power which can review or reverse their decision."

Judge Clayton, in the Archbald report, now, says (p. 26):

"In 1862, West H. Humphreys, United States District Judge for the District of Tennessee, was impeached on several specifications, one of which was based on his action in making a speech at a public meeting while off the bench inciting revolt and rebellion against the Constitution and Government of the United States. Of course, that did not come at all within the constitutional definition of treason. The evidence clearly showed that he was in no wise acting in a judicial capacity, yet he was convicted on this charge. And your Honors will remember that several of the charges of the Johnson trial were based on speeches that he made in

the celebrated swinging around of the circle. And while they lacked the one vote to convict there were 35 to 19 who voted that those were impeachable offenses. A number of the impeachments of judges of the several states of the Union have been predicated on various acts of debauchery entirely separate from the performance of their official duties. Any conduct on the part of a judge which reflects on his integrity as a man or his fitness to perform the judicial functions should be sufficient to sustain his impeachment. And of course this was with respect to a judge. It is so with respect to an executive officer, having due consideration for the different character of the duties which those officers respectively perform. It would be both absurd and monstrous to hold that an impeachable offense must need be committed in an official capacity. If such an atrocious doctrine should receive the sanction of the Congressional authority there is no limit to the variety and the viciousness of the offenses which a federal judge might commit with perfect immunity from effective impeachment."

On the Johnson trial Charles Sumner held: "That this high tribunal is the sole and exclusive judge of its own decision in such case, and each case is to be decided upon its own circumstances in the patriotic and judicial good sense of the representatives of the states." To this opinion, the biographer of Charles Sumner — your honors will find it in the 30th American Statesmen Series, the learned Warfield Story, now and still of the Massachusetts Bar, says:

> "He voted without hesitation for conviction, and still it is now clear that no especial harm was done through the brief remnant of Mr. Johnson's term, and many felt that a dangerous precedent was avoided, and we may hereafter find that under the common law a dangerous precedent was established and learn to consider the doctrine of Sumner the safer for the country."

In his admirable work on the Constitution, Richard Foster gives this summary, and in any examination that is given to the subject, I think I can truthfully commend to your Honors the work of

Mr. Foster as luminous and as satisfactory as any that will be found anywhere. In his work (vol. 1, p. 582), he says:

> "Four theories have been proposed with respect to impeachment. First, that except treason or bribery no offense is impeachable which is not declared by a statute of the United States to be a crime subject to indictment. Second, that no offense is impeachable which is not subject to indictment by such a statute or by the common law. Third, that all offenses are impeachable which were so by that branch of the common law known as the law of parliament. Fourth, and that the House and Senate have the discretionary power to remove and stigmatize by perpetual disqualification an officer subject to impeachment for any cause that to them seems fit."

The learned author then continues (pp. 585–586):

> "The first two theories"— that is, that it must be an offense declared by the statute of the United States a crime or a statutory crime, or one by the common law —" are impracticable in their operation, inconsistent with other language of the Constitution and overruled by precedents. If no crime, save treason and bribery, not forbidden by a statute of the United States, will support an impeachment, then almost every kind of official corruption or oppression must go unpunished. Suppose the Chief Justice of the United States were convicted in a state court of a felony or misdemeanor, must he remain in office unimpeached and hold court in a state prison? Some advocates have gone so far as to maintain, by a misapplication of a term of the common law, that the proceedings on an impeachment are not a trial, but a so-called inquest of office, and that the House and Senate may thus remove an officer for any reason that they approve. That Congress has the power to do so may be admitted. For it is not likely that any court would hold void collaterally a judgment on an impeachment where the Senate had jurisdiction over the person of the condemned. And undoubtedly a court of impeachment has the jurisdiction to determine what constitutes an impeachable offense. But the judgment of the Senate of the United States in the cases of Chase and Peck,

as well as those of the state senates, in the different cases which have been before them, have established the rule that no officer should be impeached for any act that does not have at least the characteristics of a crime."

And there, I believe you find the precise and the true rule that no one should be impeached for an act which does not have at least some of the characteristics of a crime.

Now, there is nothing thus far quoted from the eminent authorities who have written on the subject, but only with reference to the Federal Constitution, that is not applicable to the situation existing here, under the Constitution of the State. While the Federal Constitution declares treason and bribery to be impeachable, we have omitted the discussion as to those terms and have limited it to those upon the words "high crimes and misdemeanors," which are equally applicable to a proceeding either before the Federal tribunal of impeachment or that of the State.

With this (considering the magnitude of the questions involved and the flood of arguments that have been presented in the discussions on the subject) brief collection of authorities, the Managers will not go further into the question as to whether impeachable offenses are limited to indictable crimes, except to annex hereto as an addendum a digest of every case of impeachment in the Congress, and every one in a state jurisdiction that has come to counsel's attention. Your Honors will find such an addendum annexed to the brief. I think I should in fairness make one correction, and that is in the case of Butler of Nebraska. The addendum stated that he was impeached at a special session. That was based upon the remarks of one of the Managers, Mr. Doone, which was found in the Nebraska Public Journals in the library. Judge Parker, on further investigation, has satisfied himself that such was not the case. With that exception, so far as I know, the addendum is entirely correct, and of course we have already passed that question.

It is manifest on both reason and authority, overwhelming authority, that impeachable offenses are not limited to indictable crimes, but that impeachment may be had, not only for statutable crimes, but for anything in the nature of crime that denominates

and demonstrates unfitness to exercise the functions of office; anything that evidences unfitness to associate with decent people who must meet the officials doing the work of the state. As said by Hawkins, concerning the judiciary, "the authority of government cannot be maintained unless the greatest credit be given to those who are so highly intrusted with the administration of public justice."

But in these articles that are here challenged by this plea, all of them charge crime; one of them charges a misdemeanor and a failure to file the expense account prescribed by the Election Law. One of them charges perjury in failing to conform to the provisions of the Penal Law which says that such an account must be filed, and verified, and the third — the sixth — charges larceny. All of these are matters punishable by fine or imprisonment, or both, which brings them exactly within the definition of crime. This is no trial for disgusting manners, nor for lack of dignity, nor for immeasurable boastings — all of these may be offensive to the last degree, but they are not in the charges here, nor likely impeachable. The defendant is charged with crimes. So the controversy that has raged round the point whether crime must be charged against the offender, or a mere violation of duty positive or negative, is sufficient to convict, is not here at all.

The defense, however, rests, in large part, at least upon the proposition that while crimes are charged against the defendant, they are not crimes committed during his official term nor relating to the duties of his office, and therefore, he may not be impeached because of them.

If we reflect a moment on the object of the grant of the power of impeachment, the fallacy of this contention is apparent. The power was granted "to free the Commonwealth from the danger caused by the retention of an unworthy public servant" (Foster, p. 569).

It is true for the offenses here charged the defendant could be, and should be, indicted by a grand jury, convicted by a petit, but that does not advance the contention of the defendant a single point. The Constitution itself answers any argument of such claim by saying that both methods may be had — the fact that indictment may be had does not prevent impeachment. The exact

contrary is true; the remedies are concurrent. Section 6 of article 1 provides that indictment is not necessary in cases of impeachment; while section 13 of article VI further says that a party impeached shall, notwithstanding, be liable to indictment and punishment according to law. So the defendant may be indicted and punished on conviction, but that does not answer the just position of the Managers when they demand the conviction of the defendant, for both proceedings are allowed.

Consider a moment the position in which the prosecution of the crimes here charged as committed before the beginning of the defendant's official term would be placed in proceedings by indictment by a grand jury and by a trial. The defendant is indicted, but he is, and remains, the Governor of the State, without even a suspension of the functions of his office. There is no provision by which upon indictment he becomes suspended, or his functions cease, nor at all, except in case of impeachment; nor is there any provision I know of by which he can temporarily abdicate the functions of his office and turn them over to his lieutenant. It is only when he has been impeached that his functions pass to the Lieutenant-Governor. Indictment of a Governor has no such effect. He stands for all purpose of the trial the Governor.

Assume, then, an indictment found and on sufficient evidence. The way that the district-attorney goes about his preparation for the trial does not suit the defendant — he is too zealous — he looks too much for conviction. So he, the defendant, giving him an opportunity to be heard so as to comply with the Constitution, calmly removes his prosecutor and a more satisfactory one is substituted — one who will be more complacent to acquittal.

The judge about to hold the term where the trial is to be had is regarded as too upright and fearless. Another is assigned by the defendant to take his place. If conviction is had the question of punishment is put upon the trial judge, whose future may be made, or marred, by the assignments which the defendant who is called before him for sentence may make. And having been sentenced, the defendant thereupon issues himself a pardon.

Can such a situation be calmly considered?

It is not tolerable that such conditions should surround the only method of prosecuting a Governor for well proven crimes

and our system has limited us to no such — on the contrary it has carefully provided for just such a contingency in the provisions for the impeachment trial.

It will be answered — of course, it is the readiest answer that comes to the mind,— that, if a Governor thus under indictment should remove a District-Attorney or thus assign a trial judge, such acts would be impeachable, and it is true. But the mischief has then been done. He has been acquitted, has, in fact, acquitted himself on the trial of the indictment or has pardoned himself, and so he goes unwhipped of justice, which was never intended in the system.

And the closing paragraph of section 13 of article VI, "but the party impeached shall be liable to indictment and punishment according to law," is sure evidence that it was contemplated that a criminal holding office should first be impeached and convicted and thereby stripped of his official influence and the power thus to acquit himself by the methods stated, and then, standing as he should stand before the law, a private person, he should be tried as a private person, on indictment duly found.

One of the persuasive reasons for the establishment of a court of impeachment to meet such a case as the one at bar is found in the preamble preceding the enacting clause of what finally became section XXXII — I think it was XXXII, it is possible it was XXXIII.

Mr. Marshall.— XXXIII.

Mr. Brackett.— Of the Constitution of 1777, as adopted, the preamble was not adopted but was used in the Convention offered in the deliberations of the Convention, "and in order that all delinquents, however exalted their rank and station, may be amenable to the laws," the court of impeachment should be established. (Lincoln's Constitutional History, Vol. 1, p. 538.)

It is an established doctrine that the proceedings and debates contemporaneous the adoption of a provision, constitutional or legislative, are competent, in attempting to discover the intention of such provisions. All the circumstances surrounding the birth of the provision may be considered in ascertaining its meaning.

Our highest court has thus held in

People v. Stephens, 71 N. Y. 527, 537.
O'Brien v. Mayor, 139 N. Y. 543, 588.
O'Brien v. Stanton, 159 N. Y. 225, 229.

and indeed, a crowd of other cases.

It was intended by this provision for a court of impeachment, inserted in the Constitution of the State from the very first, and continued, although not unchanged, as will be hereafter developed, to the present day, to thereby constitute a tribunal that would be of sufficient size, sufficient independence, sufficient in experience in public affairs and in statecraft, sufficient in dignity and independence, to insure that justice should be done to the most powerful official when necessary to protect the State or to safeguard its dignity, or its decency.

The defence, in resting upon the proposition that impeachment may not be had, must claim that the people have a right to elect a criminal to high office, and that, having done so, there is no relief, that such election purges the offender from the taint of crime and leaves him free to assume the role of an honorable man among honorable men.

What is the result of holding that a person guilty of perjury, who, successfully concealing his criminality, chances to be elected Governor of the State is immune from a prosecution or proceeding to remove his baleful presence from the Executive Chamber and residence?

Shall it be said to students of our system of government that securing the highest office in the State purges of such loathsome crime that the way to avert a punishment for perjury is to be elected to high office, and that such election retains the occupant in association with decent men in high place? If so, then what is the result when, having been thus elected Governor, the individual at once, after his election, but before his inauguration, before his official term begins, commits the perjury? Surely it may not then be claimed that the election previous to the commission of the crime effects any purge of criminal taint.

Some of the members of the bar will remember, personally, the learned Joshua M. Van Cott, long one of the very learned

members of the Brooklyn bar. I feel sure that the Presiding Judge had such acquaintance. He was one of the counsel for the managers on the trial of Judge Barnard in 1872.

In an argument of convincing power — which I hope it will be the privilege of every member of the Court to read, Barnard's Trial, Vol. 1, p. 7, *et seq.* and 220, *et seq.*— he denies the result here contended for by the defendant and amply sustains the position of these managers.

But, truly, there is little support in the precedents for any such doctrine as this that an election to office after the commission of the crime for which impeachment is sought is condonement of such crime.

In the Barnard case the justice was impeached and convicted during his second term upon articles charging offenses, some of them certainly not crimes at all, committed in his first.

If the doctrine of condonation invoked by the defendant has any relevancy at all here, its application would have acquitted Barnard for all offenses that were committed during his first term, because the second election, or the election of a person the second time to office is just as effectual as a condonation and a purge as is his election for the first time; and you can find no possible difference between the case of a man who has committed a crime during his first term of office and is elected to a second and then impeached, and the case where a man has committed a crime and then been first elected.

Let us continue a little further into the possibilities of the contention of the defendant here.

When the members of the High Court of Last Resort sitting in and a part of this august tribunal come to the courtesies of the next holiday season, must they feel that they are clasping hands with a perjurer and a thief because the admitted perjury and larceny were committed 15 minutes before 12 o'clock noon of January 1, 1913, and therefore he cannot be impeached for their commission, whereas, if committed 15 minutes after noon he might be.

Must it be that every justice of our trial courts is subject to direction and appointment and assignment at the hands of a man who is subject to be justly convicted of high crime before one of them?

When, at the next regular session of the Legislature, the Senate sends its committee to notify the Governor of the State that it is convened and ready for business, must the message be taken to a criminal or one with criminal characteristics? And must such a man be permitted to send to the Houses of the Legislature his views on public affairs and be allowed to approve or disapprove of legislation here passed?

When it comes to the dread issue of life and death must the criminal feel that he is applying to a fellow criminal for reprieve or pardon, and, if denied, go to his doom with the just feeling that he has been judged by an unclean man — a fellow criminal with himself?

These questions are their own answer. None of these things must be, or can. A course of reasoning that leads to any such result as necessary under our system is fallacious and based on a misconception of the genius of our institutions. He who exercises the functions of this great office must, himself, be clean — not necessarily free from fault — not blameless of every of the venial offenses that afflict our common humanity — but he must not have committed crime, nor anything in the nature of crime that unfits him for association with the great mass of decent and God-fearing men and women over whom, for a time, he exercises authority.

And upon the correctness of this contention the people of the State may safely rest in all their future; as upon its correctness, too, they may invoke the considerate judgment of Almighty God.

It is not true then, that impeachment may not be had, and conviction, during a defendant's official term, save for criminal acts connected with the performance of official duty, or, certainly for criminal acts committed during the defendant's official term.

There have been in the papers as they have published the accounts of this trial from time to time statements that the Court has ruled against Governor Sulzer. I want to stand for the proposition here and now at any place and any time, that if it is at all within the power or jurisdiction of this Court, or in any way competent that it shall brush aside every contention that stands between the Governor of the State at the present time and his opportunity to come here and be cross-examined and make a defense affirmatively, and demonstrate that he is longer a fit and

clean man, it is doing to Governor Sulzer himself the greatest good that can come to him during the term for which he was elected.

The Constitution of the State makes no such limitation. "The Assembly shall have the power of impeachment, by a vote of all the members elected," is its language, granting the power in unlimited terms.

This power of impeachment in the Assembly has come down from the time of the Constitution of 1777, adopted at Kingston on April 20th of that year. Section 32 — I suppose it is 33 in view of what my friend says — of that instrument had this language, "that the power of impeaching all officers of the state for mal and corrupt conduct in their respective offices, be vested in the representatives of the people in the Assembly." And this, in terms, limited impeachment to official misconduct.

I shall give the authority of some great names hereafter found under that language, but for the purposes of this argument here it is perfectly competent I think and true that the language of this first Constitution of 1777, which I have read, did limit the power of impeachment to official conduct or conduct connected with the office.

This was followed by article V, section 2 of the Constitution of 1821, in these words: "The Assembly shall have the power of impeaching all civil officers of this State for mal and corrupt conduct in office" — which was all that was given by the provisions of the instrument of 1777 and in the Constitution of 1821 was added, "and for high crimes and misdemeanors" with no limitation as to whether they, such high crimes and misdemeanors, were committed officially, or during the term of the official committing them, or prior thereto. (It should be noted here that the word "high" used in this connection means nothing. It is used for sonorous purposes, and I think for that only. Christian, in his notes to Blackstone, so says [vol. IV, p. 260]). It would have been easy to have placed the words "and for high crimes and misdemeanors" where they would have been subject to and been limited by the old provision "in their respective

offices," but that was not done. They were not placed before those words " in their respective offices," but after.

To illustrate, the old Constitution of 1777, saying that the power of impeaching all officers of the State for mal and corrupt conduct in their respective offices they vested in the representatives of the Assembly. Had it been desired to add " high crimes and misdemeanors in their respective offices " those words would have been put before the phrase " in their respective offices." It was not done that way. It left the provision exactly as it was with respect to mal and corrupt conduct in their respective offices, and then, after the words " in their respective offices " added, " and for high crimes and misdemeanors " without any limitation whatever.

This language of the Constitution of 1821 continued until the Constitution of 1846, when there was a still further broadening of the power of impeachment in the Assembly by this language (Art. VI, sec. 1).

" The Assembly shall have the power of impeachment by the vote of a majority of all the members elected," and precisely the same language was continued in the judiciary article reported by the Convention of 1867, and adopted, although the remainder of the instrument was not adopted at the polls, as it was also continued in the Constitution of 1894 (Art. VI, sec. 13), as it is to-day.

We have it then that the Assembly, in express terms, has had the power of impeachment ever since we have had a Constitution at all, but under the Constitution of 1777 it was only to the extent, and could only be exercised against the civil officers of the State, " for mal and corrupt conduct in their respective offices;" that the Constitution of 1821 added to such mal and corrupt conduct in their respective offices the words " and for high crimes and misdemeanors " without the limitation " in their respective offices," leaving it that, although impeachable mal and corrupt conduct must still be " in their respective offices," such high crimes and misdemeanors thus added were sufficient cause for impeachment whether committed in or out of office, during the term of office of the accused, or prior thereto; while the two subsequent instruments, that of 1846 and that of 1894, as well as the

judiciary article adopted in 1867, simply said, "the Assembly shall have the power of impeachment by a vote of all the members elected," thereby leaving it that not only was it not necessary that the "high crimes and misdemeanors" should be committed in office (as it had been unnecessary since 1821) but that, thereafter, after 1846, it was unnecessary (although it had been necessary before) that the mal and corrupt conduct which was impeachable should be while holding, or in the exercise of the functions of, the office filled by the person impeached.

These changes of language thus, each time, removing limitations theretofore existing and thereby broadening the impeaching powers of the Assembly, are significant. Had it not been the intention of the people to thus broaden the powers given by the language of the previous instruments, they would have remained unchanged. The fact that there was such change of language unmistakably signifies the intention to change the power, and any examination of the changed language, even the most cursory as well as the most careful, will demonstrate that the change did materially and vitally broaden this power of impeachment in the Assembly. This view is not only the only reasonable one, but it is tremendously strengthened and confirmed and demonstrated correct by the debate in the conventions where the opinions were debated and where the changes were made.

In the convention of 1821 there were distinguished names: Chancellor Kent, Van Vechten, Livingston, Wheaton, Young, Talmadge, and many others. The section on the court, and the power of impeachment was debated, not briefly, but exhaustively. (Proceedings and debates, pp. 430 to 440, 443 to 446, 646.) The Chancellor was watching the interests of the judiciary, but he was entirely satisfied when impeachment was had only by a majority of all the members elected to the Assembly, and conviction only by a two-thirds vote, and the question at times waxed warm as to whether greater control of the judicial branch was not required.

And the debate with respect to impeachment and of limiting it, was not as to the propriety of the power of impeachment, but simply as to how great a number it should take to allow it, and Chancellor Kent, representing the judiciary of the State, and he himself at the head of the judiciary, believed with his whole soul

in the most thorough independence of the judiciary, and announced himself as entirely content when impeachment got to be one by a majority of the members of the Assembly elected and when it took a two-thirds vote to convict. I think it was in that convention that someone said, whether it was ever said before or not, it is true now, that when that time comes that any officer of the State subject to impeachment is impeached by a majority of the elected members of the Assembly, the representatives and the nearest representatives of the people in official life in the State, that when that time comes, the power of the officer for good is gone. And it does not make much difference what becomes of the trial thereafter so far as any influence for good on his part is concerned.

The discussion being had in the convention, whether to add to the impeaching power, as given in the Constitution of 1777, Mr. Wheaton said:

"But it was indispensably necessary to extend it further than it was carried by the Constitution of 1777, which never sent to trial and punished public officers for official misconduct. But there might be many cases of crime," — I ask you members of the Senate to give careful attention to this language:

> "But there might be many cases of crime which would render it wholly unfit that a public officer should remain in office, or be ever again entitled to the confidence of his country, which were entirely unconnected with official misconduct."

If that were so in the year 1821, I ask the members of this Court how infinitely greater it is true in this year of grace 1913. With all the agitation of a closer responsibility of officials of all kinds, it is no time at this period of agitation to limit and contract and construct the power that does exist to bring faithless officers to book. It is no time. It is no time when the Mississippi is running full on its way to the gulf to attack and weaken the embankments that confine it within its borders. It is no time when pestilence stalks in the land to weaken the health laws that protect the health of the community. It is no time now, when the people are demanding, and are properly demanding, a strict and a close and a quick account of their officials, executive, judicial, legislative; it is no time for this court by any process to contract

the powers which it has to add to the agitation or to prevent the just relief which impeachment gives.

Now, Mr. Wheaton having said that there might be many cases of crime which would render it wholly unfit that a public officer should remain in office, or be ever again entitled to the confidence of his country, which were entirely unconnected with official misconduct, what was done? The section was then passed as amended.

The thing, then, was "not done in a corner." It was debated. It was claimed in the debate that greater power of impeachment was needed — that there might be, in his language, "many cases of crime which would render it wholly unfit that a public officer should remain in office, which were entirely unconnected with official misconduct;" and, thereupon, the constitution of 1777, which they were then, in 1821, revising, containing the provision that the power of impeachment of civil officers rested in the Assembly, only "for mal and corrupt conduct in their respective offices," they voted to add to such impeachable causes, for the very reason claimed by Mr. Wheaton to be necessary — to this mal and corrupt conduct in office — the words "and for high crimes and misdemeanors," without at all saying that such crimes and misdemeanors must be connected in any way with the performance or non-performance of public duty.

I think it is not stating too much if I digress for a single minute from the printed brief, to say that the Managers here want to stand broadly upon the proposition that a man may be wholly unfit to be Governor of the Empire State some little time before he is really ripe for state's prison. The dividing line between the two — between ripeness for the state's prison and qualification for the governship is broader than that.

No stronger evidence of the intention of the convention to do exactly what it did do can be found; and it settles, as I believe, beyond cavil the contention here between the Managers on the one hand and the learned counsel for the defendant on the other — and settles it in favor of the Managers.

In the year 1821, in Massachusetts, Judge Prescott was impeached for misconduct in office. My friend has spoken of the fact that no statute of limitations runs with respect to impeachment. If I remember the dates correctly, Judge Prescott was impeached in 1821 for offenses that were committed in 1805.

Shaw, afterward the great chief justice, was of counsel for the Managers. The only causes of impeachment, as then described in the Massachusetts Constitution, were for misconduct for mal administration in office. Judge Shaw said, he being one of the counsel for the Managers, Webster being one of the counsel for the defense. Said Judge Shaw:

> "Perhaps, in this view, the commission of any heinous crime, though not immediately connected with the execution of his office, by utterly disqualifying him and rendering him incapable of performing the duties of an office requiring dignity, confidence, ability, and integrity, might reasonably be construed to be misbehavior and misconduct in office."

You see, he was struggling with the proposition that it must be for misconduct and mal administration in office; and yet he says:

> "Perhaps, in this view, the commission of any heinous crime, though not immediately connected with the execution of his office, by utterly disqualifying him and rendering him incapable of performing the duties of an office requiring dignity, confidence, ability and integrity, might reasonably be construed to be misbehavior and misconduct in office. I should certainly yield with great reluctance to the position of one of the learned counsel that the commission of an infamous offense by a judge — as perjury or forgery for instance — would not render him liable to impeachment. It would certainly be a great defect in the Constitution if a man could be brought to the bar one day, convicted of an infamous offense and sent to the pillory, and the next could assume the robes of office and sit in judgment and announce an ignominious punishment upon a fellow criminal not more infamous than himself."

In 1872 the Judiciary Committee of the Assembly presented reports recommending that Judges Cardozo and Barnard, Justices of the Supreme Court, be impeached — Cardozo, "for mal and corrupt conduct in office, and for high crimes and misdemeanors" — Barnard only for "mal and corrupt conduct in office."

Samuel J. Tilden and David B. Hill were members of that committee. Hill dissented from so much of the report in the Cardozo case as stated that impeachment should be for high crimes and misdemeanors, wishing to leave it only for mal and corrupt conduct in office. Tilden, with three other members of the committee (leaving the division of the committee five to four against Tilden's contention) dissented from the report in the Barnard case, desiring to include in the resolution the words "for high crimes and misdemeanors," instead of leaving it simply "for mal and corrupt conduct in office."

You will see thus that Samuel J. Tilden was in favor of "high crimes and misdemeanors" in both cases.

These matters are not of consequence except as evidencing that the committee had considered the difference between the two causes for impeachment — mal and corrupt conduct in office on the one hand — high crimes and misdemeanors not connected with official action on the other, and that it recommended impeachment of Cardozo for both, Barnard for but the one.

The Judiciary Committee asked Mr. Tilden to prepare some notes on the subject of what are impeachable offenses, and, in pursuance of the request, he did prepare a complete and thorough opinion on the subject. It evidences in every part his profound thought and learning and is invaluable in any study of the subject under discussion.

He was at that time a member of the Assembly and a member of the Judiciary Committee, although he was not elected one of the Managers. Two years later, two years and a very few months later, he was the Governor of his State. Four years from the time he gave this opinion he was the candidate of his party for the President of the United States, and there are those still living who still passionately believe that he was elected to that high office. His name certainly and his fame must have weight in any Court constituted as this Court here.

His conclusions were these: (Tilden's public writings and speeches, edited by John Bigelow, Vol. I, p. 472 et seq.)

> 1. Impeachment under our Federal and State Constitution is a proceeding to remove a public officer if cause exist. Its object is not to punish the individual, but to protect the

people, even the disqualification to hold office, if added to removal, being more preventive than penal.

2. Impeachment as it existed in England has been modified here, in that

(a) Judgment may not extend beyond removal and disqualification.

(b) The party remains liable to trial and punishment in the ordinary courts — thereby separating the two elements, assigning jurisdiction of the personal crime to the ordinary courts and reserving impeachment to remove and disqualify an officer unfit to exercise the functions of the office.

3. Deducing the grounds of impeachment from the nature and objects of the procedure, while they may be called offenses, the word offense must be held, certainly in New York, to include acts which create personal unfitness for office.

4. The Constitution of 1777 described impeachable offences as "mal and corrupt conduct in office." That of 1821 added "and for high crimes and misdemeanors." That of 1846 gave the power of impeachment without any words of description of cases to which it should apply. It omitted the words of definition of 1777, the more extended phraseology of 1821, and conferred the power in the broadest and most general terms. The judiciary article of 1867 continued the same words.

5. Physical disability is surely a cause of impeachment, the failure to resign in such a case being a moral delinquency. Can it be doubted that a moral disability is an impeachable offense? All this yields too much to the notion that a ground of removal must be an offense. Unfitness, inability to serve the public, creates not merely a cause, but a necessity, for removal.

6. Misconduct wholly outside the functions of an office may be of such a nature as to exercise a reflected influence upon those functions and to disqualify and incapacitate an officer from usefully performing those functions. In such case the misconduct constitutes an impeachable offense and is

ground for removal. The words "high crimes and misdemeanors" are not limited to official acts.

7. Mr. Tilden then adopts the definition of George Ticknor Curtis in his "History of the Constitution of the United States" which I have read before and which I will not repeat here further than to recall the language that "a cause for removal from office may exist when no offense against positive law has been committed as when the individual has, from immorality, or imbecility, or mal administration, become unfit to exercise the office.

8. He then notes and approves the language of Justice Shaw in the Prescott trial now repeated for convenience (p. 482):

> "Perhaps in this view, the commission of any heinous crime, though not immediately connected with the execution of his office, by utterly disqualifying him and rendering him incapable of performing the duties of an office requiring dignity, confidence, ability, and integrity, might reasonably be construed to be misbehaviour and misconduct in office. I should certainly yield with great reluctance to the position of one of the learned counsel, that the commission of an infamous offense by a judge — as perjury or forgery for instance — would not render him liable to impeachment. It would certainly be a great defect in the Constitution if a man could be brought to the bar one day, convicted of an infamous offence and sent to the pillory, and the next could assume the robes of office and sit in judgment and denounce an ignominious punishment upon a fellow criminal not more infamous than himself." And Mr. Tilden adds:
>
> "The doubt which seems to exist in the mind of that great jurist arose from the words of description of impeachable offienses in the Constitution of Massachusetts, which literally relates only to acts done or omitted in office."

9. The constitution and laws of the State of New York have left us free from any possibility of so narrow a construction as that which Chief Justice Shaw disputed in its application to the Constitution of Massachusetts. They recognize the principle that a personal crime may create a personal disqualification to exercise the functions of a public office, although the particular offense may be totally disconnected with that office. They do not limit the range of impeachable acts, omissions, or defaults, which may work such a disqualification, to any term of office or to any time or place — I am going to repeat that as covering the whole range of the contention here:

> "They do not limit the range of impeachable acts, omissions or defaults, which may work such a disqualification, to any term of office or to any time or place, but leave the whole judgment as to whether or not the disqualification is produced to the Supreme and exclusive jurisdiction of the High Court of Impeachment, which is the ultimate agent of the sovereign people in their supervisory power over public officers."

In considering the question, Mr. Tilden discussed further the effect of the statutes then in force bearing on the subject. The Revised Statutes of 1830 had a section then in force as follows — you will bear in mind now that from 1821 the language of the Constitution was, "for mal and corrupt conduct in office and for high crimes and misdemeanors," and this statute of 1830 was modeled on the language of that provision of the Constitution of 1821 —

> "The Assembly has the power of impeaching all civil officers of this state for mal and corrupt conduct in office, and for high crimes and misdemeanors, but a majority of all the members elected must concur in impeachment"—

following exactly the language of the Constitution of 1821. That remained in force and was in force notwithstanding the adoption of the Constitution of 1846; the statute remained in force until a time, after 1872, I think until 1881, on the adoption of this section 12 of the Penal Code.

As to its effect, Mr. Tilden says:

> "If the omission of the words of description made by the Constitution of 1846 and continued by the amendment of 1867, had any effect in enlarging the definition established by the Constitution of 1821, the enlarged rule," — that is the enlarged rule of the Constitution of 1846, which did enlarge the rule,— "the enlarged rule would prevail over the statutory iteration of the words of the then existing Constitution."

I hope I have made that plain because it is the precise situation in which we find ourselves now. The statute of 1830 provided for impeachment in the language of the Constitution of 1821 as it then in 1830 stood, but in 1846 the power of impeachment being greatly broadened and left entirely to the Assembly without limitation or definition, they neglected or forgot to change the 1830 and left the statutory direction with respect to impeachment precisely as it had been under the limited language of 1821, just as here when our friend on the other side to whom was committed the reconcilement of the Codes with the Constitution of 1895, forgot or overlooked this section of the Code of Criminal Procedure, and did not conform that to the language of the Constitution.

Precisely the same condition exists now, and while our friends have attempted to make it somewhat embarrassing it is not in the slightest degree so.

Section 12 of the present Criminal Code says:

> "The Court for the trial of impeachments has power to try impeachments when presented by the Assembly, of all civil officers of the State except justices of the peace, justices of justices courts, police justices and their clerks, for wilful and corrupt misconduct in office."

Now, it should be noted that that does not assume to be exclusive. It nowhere says that that is the exclusive right of the Assembly, and the body that adopted this being utterly inferior to the Constitution of course in existence at the time, the very fact that they did not assume to make it exclusive, it seems to me indicates that it may be entirely disregarded on reason.

This section formed a part of the Code of Criminal Procedure when it became a law as chapter 442 of the Laws of 1881, and it has remained ever since unrepealed and unamended, and unconformed to the Constitution of 1894.

If by this section it is sought to spell out a limitation of the power of impeachment in the Assembly and which was granted to it by the Constitution of 1846, and has ever since continued in the words "The Assembly shall have the power of impeachment by a vote of all the members elected," the answer is that it is wholly nugatory as an attempt to curtail a power of the Assembly, specifically granted to it by the Constitution in unlimited terms. I need not stand in the presence of the ten members of this Court to whom construction of statutes and constitutions is a habit and say that curtailment of constitutional power cannot be effected by a legislative enactment. Of course that is held over and over again.

The grant to the Assembly of the power of impeachment is by the Constitution and no act of the Legislature could nor can in any wise limit such power or jurisdiction granted by the people directly in the adoption of the Constitution, to any officer or body doing the work of the State.

Now, I was not at all unmindful of the delightful brief that was prepared by Judge Vann and that was read here by one of the counsel, but it stands true here that if the Legislature can impose any limitation of its constitutional grant of power to the Assembly it may go to any length in so limiting the Constitution, saying that impeachment rests in the Assembly, giving it in the broadest and most comprehensive terms; if the Legislature can say that it can be had only for malversation in office then it can go to any length and say it shall not be for any purpose other than murder or any single thing. The minute they admit the contention made in the brief of Judge Vann that there can be any limitation of the power of impeachment that minute you give to the Legislature the right to take it all away or all but an insignificant part. It simply stands that this broad power of impeachment in the Assembly thus granted by the Constitution cannot be omitted in the slightest degree by the Legislature, not one jot or one tittle of the power of the Assembly can be taken away by sec-

tion 12 by any similar or by any enactment that the Legislature can make on the subject. Section 12 stands as though it had never been, but here is an attempt by legislative act to withdraw from the Assembly the power to impeach for any offense except for misconduct in office, and that cannot be done in the slightest degree, and so it stands.

A step further before my conclusion: If it be said that the Assembly, by passing this section 12 of the Criminal Code in 1881, consented to a curtailment of its jurisdiction in impeachment trials and, therefore, is estopped, the perfect answer is that no power granted to an officer, or a body, by the Constitution can be limited by consent of the person or body, to whom it is granted, or otherwise. The grant of power imposes the duty of its exercise in the public service. Where a court has jurisdiction of the subject-matter brought to its attention, it is not a question of discretion whether it shall exercise such jurisdiction or not, if properly invoked. It is bound to do so. Power in a public officer, or public body, is not to be exercised or not, at the whim of the officer. It carries with it the correlative duty of the exercise of that power in the public interests, and no waiver of such power or jurisdiction, no consent to any legislation attempting to limit it, can in the slightest degree affect the actual existence of the power as granted by the Constitution, nor in the slightest degree affect the obligation to exercise the power when properly invoked.

Mann v. Fearson, 9 How. (U. S.) 248, 259.
Mayor v. Fargo, 3 Hill, 612.
People v. Albany, 11 Wend. 539, 542, 543.
Phelps v. Hawley, 52 N. Y. 23, 27.
Hagadorn v. Raux, 72 N. Y. 583, 586.

In the language of Mr. Tilden the enlarged rule in the Constitution prevails over the statutory iteration, in 1881, of the words of the Constitution of 1821.

Another method of reaching the same result is that section 12 of the Criminal Code thus passed in 1881 was repealed by the adoption of the present Constitution of 1895, again giving to the Assembly the unlimited power of impeachment in the same language as of the Constitution of 1846 and the judiciary article of

1867. The adoption of the Constitution of 1895 operated as the repeal of such section 12 — a repeal of a higher body and certainly as effectual as though such a repeal had been by the legislature itself passing a repealing act.

Mr. Tilden based something of argument upon the statutes of 1830. If deemed of consequence it will be found that section 30 of the present Public Officers Law is the same precisely as the law of 1831 which Mr. Tilden construed. It comes then that this opinion of Mr. Tilden, statesman that he was, a man of the broadest views as well as a most eminent lawyer, that the position from which he spelled his conclusions existed in 1872 precisely as they exist now, and the conclusions that he reached there are compelling in favor of the contention of the Managers here, and we need not have any embarrassment over the existence of section 12 of the Criminal Code. The questions under consideration are to be settled precisely the same as though it had never passed.

It is, however, now claimed by the learned Counsel for the defendant that section 7 of article X affects the situation, justifies this section 12 of the Criminal Code as constitutional and defeats this, our, contention. The section thus invoked reads as follows:

> "Provision shall be made by law for the removal for misconduct or malversation in office of all officials, except judicial, whose powers and duties are not local or legislative, and who shall be elected, at General Elections and also for supplying vacancies created by such removal."

This section first came into the organic law as section 7 of article X of the Constitution of 1846, and has since remained without change.

The process of reasoning that seeks to give this section any applicability to the question under argument is obscure; how it may be used to justify any limitations of the unlimited power of impeachment granted to the Assembly by the Constitution is not at all apparent. The language of the section and its physical position in the organic instrument alike evidence its non-applicability to any phase of impeachment proceedings or of the power of impeachment.

We have seen that impeachment and impeachment trials are governed by article VI, section 13, article VI being the one on

the judiciary where provisions for impeachment are properly and naturally placed.

The subjects of the Executive and his power are treated in Article VI, the other State officers, except the Judiciary, by Article V, the Judiciary by the various sections of Article VI. Article VII covers the matter of State credit, power to contract debts, the sinking fund, etc.; Article VIII relates to corporations, commissions and boards; Article IX to schools, and then comes Article X, in which the section under discussion is found. It begins by treating the subject of County Officers, Sheriffs, Clerks, District Attorneys and the like (Article X, Section 1). Section 2 provides for the appointment or election of County and lesser officers; Section 3 relates to the duration of term of officers, where such term is not provided for by the Constitution; Section 4 provides that "The time of electing all officers named in this Article shall be prescribed by law;" Section 3 treats of the filling of vacancies; Section 6 defines the political year and then comes this Section 7 before quoted in full.

The Constitution has come down in this Article, away from the offices of Governor, Lieutenant-Governor, Judges and Legislators, and is here treating the subject of officers of lower rank. If the defendant's counsel are right, this continuous diminuendo suddenly ceases, and we at once have the tremendous crescendo of a return to the power of impeachment, which, as mere arrangement, would be grotesque.

The section refers to inferior officers, other than Judicial, inferior to Governor and Lieutenant-Governor, and provides that their removal may be provided for by law. The Constitution, deeming it beneath its dignity to treat of such lesser subjects, it is remitted to the Legislature to provide by law for such removal, and this contention is enforced by the fact that the Legislature has provided by law for such removal of such lesser officers, but nowhere for the removal of Governor or Lieutenant-Governor (Public Officers Law, sections 32, 33, 34, 35, 36).

Section 32 of the Public Officers Law provides that the Secretary of State, Comptroller, Treasurer, Attorney-General, or State Engineer and Surveyor, may be removed by the Senate, on the recommendation of the Governor, for misconduct or malversation

in office, if two-thirds of all the members elected to the Senate shall concur therein.

Section 33 takes care of the cases of removal by the Governor of officers appointed by him to fill vacancies in minor places.

Section 34 allows the taking of testimony in removal cases, while 35 relates to mere procedure and 36 to removal of town and village officers by the Court.

This practical construction by the Legislature, by the various revisers and codifiers of the statute, nowhere saying a syllable about removal of the Governor or Lieutenant-Governor, nowhere mentioning impeachment, either its power, or its proceeding, is some — slight perhaps, but still some — evidence of construction of this constitutional section.

But that this Article X does not, in any part, refer to, or affect, the office of Governor and Lieutenant-Governor is demonstrated beyond challenge by the language of section 4 of the article, before quoted: "The time of electing all officers named in this article shall be prescribed by law." The time of electing the Governor and Lieutenant-Governor is fixed by Article VI, section 3 as the same time when members of Assembly are chosen, which is (Article III, Section 9) the Tuesday succeeding the first Monday in November, until otherwise directed by the Legislature.

When, therefore, section 4 of Article X remits to the Legislature the power to prescribe the time of electing all officers "named in this Article," the officers named in the article are other than those the time of whose election is fixed by the Constitution in its other parts.

The contention of the defendant, however, still is that this Article X, section 7, gives to the Legislature the power to enact section 12 of the Criminal Code, and renders it forceful and not obnoxious to the Constitution. The language does not purport to limit in any way the general grant of the power of impeachment given to the Assembly by section 13, Article VI. As to judicial officers, by the Constitution itself is given:

(a) The power of impeachment.

(b) Removal by both houses by a two-thirds vote of each house (Article VI, section 1).

This power of removal of judges under this Constitutional provision in no way limits or affects the power to impeach them. The proceedings are concurrent. If this be so — if a constitutional power to remove does not affect impeachment proceedings — how can a legislative power of removal have any effect on impeachment proceedings? Twice within the decade the power of removal of a Justice of the Supreme Court has been invoked in the Legislature, but no counsel, the most zealous, has ever claimed in brief or argument, that such power of removal precluded or limited the power of impeachment.

It stands true, then, that as to the judiciary, by the Constitution itself, we have both the power of impeachment and the power of removal; as to all other officers except members of the Legislature who are taken care of by the power of expulsion the power of impeachment is given by the Constitution and, as to all such other officers but the Governor and Lieutenant-Governor, the right to enact laws for their removal is given to the Legislature and it has acted under this power. But nowhere may the Legislature limit, in any way, the right given to the Assembly in broadest phrase, to impeach any officer, executive or judicial, for any reason it sees fit.

So it stands that with respect to the judiciary and the executive officers of the state, as to each of them, there are two ways to remove, to get rid, to oust. As to the judiciary both are constitutional ways, both the power of impeachment and the power of removal. As to the executive officers, the power of impeachment is constitutional. The power of removal is legislative, granted to it by the constitutional provision to which I have referred.

We have thus far argued for the power of impeachment in the Assembly and the right of conviction in the court of impeachment,

First, upon the general doctrine applicable anywhere in the Republic, and

Second, upon the proper construction of our State Constitution.

There is another line of reasoning that reaches the same result, and, at the same time accentuates and confirms the previous argument.

The argument has proceeded upon the concession, although for the argument only, that the claims here charged against the de-

fendant were committed not only outside the day of his term of office but totally disconnected therefrom. But no such lack of connection exists — on the contrary the crimes charged are immediately and vitally connected with the defendant's official term — so vitally connected that it is no violence of speech to say that they were official acts and must be so treated here.

The Election Law, Chapter 22 of the Consolidated Laws, passed in 1909, which codified the various corrupt practices acts, up to that time, and which was amended by Chapter 891 of the Laws of 1911, has imposed new duties upon one running for office, has created new relations between a candidate for office and official duty when office is finally assumed, relations so close and so well defined as to render any ancient precedents on the subject, whether crimes committed prior to the official term are impeachable or not, largely obsolete. A detailed examination of the provisions of this Election Law is not necessary. It is sufficient to say that among other things it is designed to control the expenditure of funds, and generally to prescribe the duties of candidates and of those in charge of the selection of nominees and the election of candidates.

Of the laws in force at the time of the general election in 1912, immediately affecting the question here discussed were sections 546 of the Election Law and 776 of the Penal Law.

The first, that of the Election Law, requires to be filed within twenty days after election a statement setting forth all the receipts, expenditures, disbursements and liabilities of a committee and of every officer, member and other person in its behalf, which shall include the amount received, the name of person or committee from whom received, the date of its receipt, the amount of every expenditure or disbursement exceeding five dollars, the name of the person or committee, to whom it was made, and the date thereof and, except where made to another committee, the purpose of the expenditure or disbursement.

A candidate is required to file the same statement and, in addition, all contributions made by him.

The latter (section 776 of the Penal Law) requires to be filed a statement by a candidate within ten days after election showing in detail all the moneys contributed or expended by the candidate, directly or indirectly, by himself or through any other

person, in aid of his election. It requires that there shall be given the names of the various persons who received the moneys, the specific nature of each item and the purpose for which it is expended, or contributed. To this there must be attached an affidavit, subscribed and sworn to by such candidate, setting forth that the statement is in all respects true and a full and detailed statement of all moneys contributed or expended by him, directly or indirectly by himself or through any other person in aid of his election.

It will thus be seen that from the time a person is nominated for office he comes under the provisions and directions of the law. He is not yet an officer, but he is seeking to become one and, in order to become one, is required to conform to these directions of the statute.

There has thus been prefixed to the office what we may call an official vestibule, so placed that a person entering into the office must pass through it. And it is no stretch of language to say that the law practically makes an officer of a candidate — and of an officer elect. He is certainly subject to the direction of the law from the moment he is nominated.

The object of all this is patent. Misconduct as a candidate corrupts public duty in office. Wickedness in a candidate is as surely inherited by the official as any hereditary taint by the child from the parent.

The title to one of the acts leading up to the present law expresses it fully — "An act to amend the election law in relation to the publicity of contributions to, and expenditures of, campaign funds, and providing for judicial inquiries thereto." (Chapter 502, Laws 1906.) The purpose of the statute is not captious. It is genuine and for the purpose of affording positive information to all interested, to the people at large, not only how much and for what the candidate himself has contributed, but the persons who have made contributions to him, so that there may be no misunderstanding either as to the amount of contributions thus made, or the character of those who made them. It was intended that the people should have this information, so that, among other things, during the administration of the office, it could be observed whether there was any attempt being made to reward by official

patronage, or appointment, those who had made undue contributions in aid of the election of the official dispensing such patronage.

While the act of filing the statement of expenses is required to be done before the official takes his office, its purpose is to insure pure conduct in the preliminary struggle for the office, and it has become a matter of the deepest concern to all the people of the State that the various candidates shall comply with this provision, fully and completely. Not once since this policy embodied in the corrupt practices act has been entered upon, has there been any variableness or shadow of turning, with respect to it. Every step in legislation has been to strengthen and complete the scheme and to make stronger its provisions. It was attempted to make forfeiture of office one of the results of failing to file a statement as prescribed by law, but this was held unconstitutional, as creating extra constitutional test for office. (Saxe on Elections, p. 174, and cases there cited.)

The charge here made (among others), is that the defendant, William Sulzer, made and filed a grossly false statement under these provisions of the statute, and then corruptly swore that it was true. The statement thus filed showed receipts by the defendant from sixty-eight contributors to the amount of $5,460 and expenditures aggregating $7,724.09. It is charged that contributions enumerated in the article, to the amount of $8,500, were made to the candidate and not reported.

By this corrupt practices legislation, the position of a candidate is legally, indissolubly linked with that of the official. It is as much required that he shall make this statement of the amounts received by him and the expenditures, as it is required that he shall take the official oath as Governor, when inaugurated. The one cannot be separated from the other, and one is as positive a direction as is the other. The making of a false statement of receipts and expenditures, is just as much a violation of duty and the commission of a crime, as is the violation of the official oath taken upon induction into office.

It comes then, instead of the candidate being required to take but an oath before he enters upon the duties of his office, he is required to make this certificate during the inchoate period, just

after he has been voted for as a candidate, and to take the oath when he assumes the duties of the office. The falsity of statement of receipts and expenditures is as surely a violation of official duty and, not perhaps as noxious in its effect and yet in view of the purposes of the statute scarcely less so, and just as much scandalizes the State and is just as much evidence of moral unfitness for the office, as the violation of the inaugural oath taken at the beginning of the term. He who deliberately fills out a false statement in November is not fitted, nor fit, for public office in January; he who commits larceny in October may not be intrusted with the responsibilities of high office three months later.

Where is the harm that can come to the State from the violation of the oath of office that does not come from a false certificate as to what has been done while a candidate for office — where the shame in the one case, that does not follow in the other? Indeed, the falsity of the certificate as to the receipts and expenditures is the more precisely provable and the more precisely wrong than is the violation of the official oath, because it relates to specific and absolute facts, while the violation of the official oath may have something of difference of opinion as to what constitutes official duty in a given case, in its defense. But there can be no possible defense or palliation of the act of suppressing contributions and expenditures nor in making a false affidavit as to them.

In all this there is nothing of effort to convict the defendant for lying. The world hates a liar, but it is not for lying that we ask conviction of William Sulzer. In pursuance of the imperative directions of the statute — a statute based on the soundest reasons — he is charged with filing a false certificate of contributions made to him. In doing so he violated the law and committed a crime. Appended to this false statement, thus filed, is an affidavit, duly sworn to before a magistrate, attesting to the correctness of the statement. Argument is not here had as to whether the crime of perjury may be predicated upon this false affidavit. It is had on another phase of the case, by another counsel who will succeed me. But, whether guilty of legal perjury, or whether, on a quibble that finds its congenial atmosphere at the Old Bailey, or the Tombs Police Court, he shall escape

judgment of that loathsome crime, he intended to commit perjury and believed that he was committing it, in subscribing this oath. All the blackness of heart; all of intention to do wrong; all the revelation of infamous character, that are demonstrated by a legally false oath, are demonstrated by this intention to commit perjury, as too, by the certificate itself, the violation of the statute designed to prevent corruption at the polls.

It may be urged that the statute creates no penalty of forfeiture of office, for a false certificate of receipts and expenditures, during the candidacy of the person making the oath. It is true. But, as before seen, it attempted to do so, but was declared impossible under the Constitution. If it could, no impeachment would, perhaps, be necessary. We are not here arguing any question of automatic removal, but the question of what is an impeachable offense.

To repeat, varying the phrase very slightly — no man may now legally become Governor of the Empire State, unless and until he shall have done two things, one certified to his receipts and expenditures while a candidate, and appended thereto his affidavit that it is correct, the other the oath he takes upon his inauguration, the instant that he becomes the highest official of the State. Both are connected with his office, one as much as the other; both precede his actual investment with the powers and duties of the position, the one by a few weeks, the other by a single instant.

A person making a false certificate of contributions and expenses is guilty of a misdemeanor (Penal Law, sec. 776) for the filing of a false statement is, of course, not a compliance with section 776 which requires the filing of a true one, which has not been done.

Will it be claimed, it has not up to date, but it is necessarily their contention, by the learned counsel for the defense that, if it were clearly alleged and proven here that the defendant were guilty of the crime of bribery in the purchase of votes at the election where he was chosen, it would not be an impeachable offense because the crime was committed before the beginning of the official term. I cannot think that they will make any such conten-

tion. If they do, I suspect that they will be without the support of a single member of the court. Yet bribery is not mentioned in the Constitution as an impeachable offense, and, if it is such, it is only under the general grant of the power of impeachment without attempt at definition, only as a high crime and misdemeanor, and if it is so guilty and impeachable, as of course it is and must be, it is for a crime committed before the official term began, is something done as an individual, not any act as Governor, nor any malversation in office, or for misconduct in office. How may an official be impeached for bribery committed before his term began, but connected with his election to the office held, and not be impeached for evasion of the statute as to filing a certificate of receipts and expenditures connected with his election. Bribery at the election is not mentioned as a cause of impeachment, neither is a false certificate as to election expenses. Either, if impeachable at all, must be because of the commission of a crime. Both are done in connection with the election of the very office held and one is as corrupting to the party doing it, as much an evidence of the moral unfitness that disqualifies the offender from continuing to hold his office and is as truly impeachable, as the other.

All the cases of expulsion from a legislative body for bribery in obtaining election to the office are applicable here. Expulsion from a legislative office for bribery is but the equivalent of impeachment of an executive or judicial officer for the same offense. Impeachment of a legislative member is not a proper method of procedure, and so far as counsel have discovered was done only in the Blount case in the early part of the last century. Never in this country before, or since. The Lorimer case, fresh in the minds of all, is the latest, where expulsion was had for such cause. In that case, in all cases where action has been had for bribery in securing the office, the offense has been committed, of course, and of necessity, before the official term began.

It stands true, then, that in the State of New York the offenses here charged are impeachable; that, if proven, they show a moral unfitness to fill the office of Governor or any office, and the defendant's contention with respect to the nature and effect of the crimes charged must be overruled.

APPENDIX.

Federal Impeachments.

William Blount, *Senator from Tennessee.*

Impeached July 7, 1798, for conspiring while a Senator to conduct hostile expedition against Spain in the Floridas and Louisiana, in order to conduct same for Great Britain. Also for exciting and encouraging Creek and Cherokee Indians to begin hostilities in the Floridas and Louisiana for the same purpose — all in violation of treaty between United States and Spain. Blount filed a plea to the jurisdiction on ground that he was not then a Senator, and was not then, or at the time of the offense charged, a civil officer of the United States. (He had been expelled by the Senate before his impeachment.)

Plea sustained 14 to 11 and Blount acquitted; the result of this ruling being that none but a civil officer can be impeached.

Managers included Messrs. James A. Bayard and Robert G. Harper, Samuel W. Dana, Dennis, Evans, Gordon, Hosmer, Pinckney, Sewal, Imlay and Kittera.

Respondent's counsel.— Jared Ingersoll and A. J. Dallas.

John Pickering, *U. S. District Judge, N. H.*

Impeached February, 1803, for delivering ship Elisa to Claimant, after attachment, without requiring bond as provided by law; refusing to hear testimony offered by District Attorney on behalf of United States; refusing to allow an appeal from his judgment; drunkenness on bench and using profane language.

Pickering did not appear; but his son, through Robert Harper as counsel, filed a petition that Pickering was insane and asked more time. Denied. Trial proceeded, Pickering being absent and not represented.

Guilty 19 to 7 on each article.

Sentenced to removal from office.

Managers.— Messrs. Nicholson, Early, Rodney, Eustis, John Randolph, Jr., Samuel L. Mitchell, George W. Campbell, Blackledge, Boyle, Joseph Clay, and Newton.

Samuel Chase, *Justice Supreme Court, United States.*

Impeached March, 1814, for misconduct on trials of John Fries for treason, and James T. Callender for sedition; an improper attempt to induce a grand jury to find an indictment against a certain newspaper; and for delivering a political harangue to a grand jury in Maryland and other misconduct in office.

Chase answered at length, admitting many facts; but explaining them by able argument.

Acquitted.— Highest vote against him, 19–15.

Aaron Burr, Vice-President, presided at trial.

Managers.— John Randolph, Joseph Nicholson, Rodney, Early, Boyle, Nelson, and G. W. Campbell.

Respondent's Counsel.— Luther R. Martin, R. G. Harper, Joseph Hopkinson, and Philip B. Key.

James H. Peck, *Judge United States District Court, Missouri.*

Impeached in April, 1830, for punishing Luke Edward Lawless for contempt, because he published a letter pointing out errors in one of Judge Peck's decisions, regarding a Spanish land claim. Peck answered justifying his act.

Acquitted.— 22 guilty; 21 not guilty.

Managers.— James Buchanan, Henry R. Storrs, Ambrose Spencer, George McDuffie and Charles A. Wickliffe.

Respondent's counsel.— William Wirt and Jonathan Meredith.

West H. Humphreys, *U. S. District Judge, Tennessee.*

Impeached May, 1862, for accepting and discharging duties of Judge under Confederacy without resigning as United States Judge, and other treasonable acts. Humphreys did not appear. Tried as if plea of "not guilty" had been entered.

Convicted, and sentenced to removal and disqualification to hold an office by unanimous vote.

Managers.— Bingham, Pendleton, Trin and Dunlap.

Andrew Johnson, *President of United States.*

Impeached, February 24, 1868, for removing Stanton as Secretary of War in violation of Tenure of Office Act, and an act to define certain conspiracies; for making speeches contemptuous of Congress.

Johnson answering raised legal questions only. Chief Justice Chase presided. Trial occupied from March 30 to May 6, 1868.

Acquitted.— 35 guilty, 19 not guilty.

Managers.— Benj. F. Butler, Thaddeus Stevens, John A. Bingham, George S. Boutell, James F. Wilson, Thomas Williams and John A. Logan.

Respondent's counsel.— Henry Stanbery, Benj. R. Curtis, William M. Evarts, William S. Groesbeck and Thomas A. R. Nelson.

William W. Belknap, *Secretary of War.*

Impeached, 1876, for bribery, receiving $6,000 to $12,000 per year from post-trader appointed by him.

Belknap resigned and President Grant accepted his resignation. Immediately, thereafter, and on the same day he was impeached.

Plea was filed to jurisdiction upon ground that Belknap was not an officer of United States when impeached.

Overruled by vote of majority, but less than two-thirds.

Counsel for Belknap refused to plead further and trial pronounced as if Belknap had pleaded "not guilty."

Acquitted.

Managers.— Scott Lord, J. Proctor Knott, W. T. Lynde, John A. McMahon, Eldridge G. Lapham, George F. Hoar, Jenks.

Respondent's counsel.— Matthew H. Carpenter, Jeremiah S. Black and Montgomery H. Blair.

Charles Swayne, *Judge U. S. District Court, Florida.*

Impeached December, 1912, for claiming and receiving $10 per day for expenses while holding court outside his district; for not residing in his district; for abuse of judicial power by causing a receiver of railroad, appointed by him to furnish him with free transportation, private car, etc., for unlawfully adjudging certain lawyers in contempt of court.

Swayne answered.

Acquitted.

Managers.— Messrs. Palmer, Jenkins, Gillet, Clayton and Smith.

Respondents' counsel.—Anthony Higgins and John M. Thurston.

Robert W. Archbald, *Judge U. S. Commerce Court.*

Impeached 1912, for unlawfully, and through his influence as a judge, making contracts and obtaining options, valuable to him, from railroad companies and others, who were litigants before him; for accepting presents of money, from lawyers, and litigants to pay his expenses on a pleasure trip; for appointing as Commissioner of Jurors, a general attorney for a railroad company.

Archbald answered.

Convicted, removed, and disqualified.

Managers.— Henry D. Clayton, Edwin Y. Webb, John C. Floyd, John W. Davis, John A. Sterling, Paul Howland and George W. Norris.

Respondent's counsel.— R. W. Archbald, Jr., A. P. Worthington, M. J. Martin and Alexander Simpson.

STATE IMPEACHMENTS.

Arkansas.

Powell Clayton, *Governor of Arkansas.*

Impeached, 1871, for conspiring with members of the State Supreme Court to unlawfully deprive Lieutenant-Governor James W. Johnson of his office, to which he had been elected and for which he had duly qualified; for unlawfully removing a County Probate Judge; for aiding in frauds in the election of members of the State Legislature; for accepting bribes, etc.

At the same time a resolution was passed, suspending Clayton from performance of his duties as Governor and the members of the House of Representatives by force locked him into the Executive Chamber and nailed the door, in order that he might not escape and act. The next day he notified the Assembly that he was advised by counsel that the Assembly had no power to suspend him from office.

The next day after the impeachment of Governor Clayton the House of Representatives adopted a resolution of impeachment against John McClure, Chief Justice of the State, for engaging in the conspiracy with the Governor above mentioned.

As soon as a quorum of the Senate was present, Articles of Impeachment against the Governor and Chief Justice were presented.

Other state officers were impeached about the same time.

The Senate thereupon adopted rules for impeachment, which forbade the managers from arguing any preliminary or interlocutory question during the trial for more than ten minutes, and otherwise restricting the managers. Thereupon, the managers reported to the House that in their opinion no fair or impartial trial could be had. The report was accepted and the managers discharged, and the Speaker of the House was authorized to appoint another board of managers, which was done. The new managers then reported that they were unable to find sufficient evidence which would warrant the preparation of particular articles of impeachment against the Governor and requested that they be discharged. The House thereupon resolved "that further proceedings in the impeachment of Powell Clayton be dispensed with, and that the action of this House heretofore taken, be set aside and cancelled; that the Senate be informed of the action of this House in the premises, by the Clerk of the House, and that the Committee of the Board of Managers be discharged."

On the same day Governor Clayton sent the Senate a message, declining to accept the position of United States Senator.

A single article of impeachment was presented against Chief Justice McClure for unlawfully issuing an order restraining James M. Johnson, as Lieutenant Governor from exercising the duties of the office of governor during the period above mentioned.

A compromise was arranged under which Johnson resigned and was appointed Secretary of State. Governor Clayton was reelected to the Senate of the United States and accepted the office.

A Special Chief Justice was appointed by the Governor to preside on the trial of Chief Justice McClure, who filed a demurrer to the articles upon the ground that although he was charged with unlawfully issuing an order it was not alleged that he did it with corrupt motive. The demurrer was unanimously sustained.

California.

William R. Turner, *Judge of the Eighth Judicial District.*

Impeached in 1851, for committing Stephen J. Field for contempt of court to an imprisonment for forty-eight hours and a fine of $500, and his disbarment for taking legal steps to set aside the contempt proceedings, and the similar treatment of two other members of the Bar who assisted him in the matter. Mr. Fields was released by habeas corpus immediately after his arrest, but Judge Turner had him arrested again, threatening with commitment the judge who granted the writ, and after the attorneys had been restored to the Bar by a mandamus from a higher court, attempted to again disbar them. The matter was compromised by a passage of a law, redividing the state into judicial districts, and assigning Judge Turner to another part of the state.

He subsequently resigned to avoid an impeachment for habitual drunkenness and other charges.

Henry Bates, *State Treasurer.*

Impeached 1857, for conspiracy to defraud the State through loans and deposits of the State funds and other official misconduct.

The respondent pleaded to the jurisdiction of the Court in his answer which alleged that his resignation had been accepted by the Governor, and that he was no longer in office when the articles were adopted by the Assembly.

The Managers filed a replication which alleged that the respondent was treasurer of the State at the time of the impeachment; that if he had been indicted, the indictment was found after the articles had been presented. To this Bates filed a plea which claimed that the allegations in his answer, which were not denied by the replication were sufficient to show that the Court had no jurisdiction. The Senate overruled the objection to the jurisdiction and ordered a further answer, which the respondent refused to make.

Convicted, removed from office and disqualified in a judgment which recited the fact that he had resigned after his impeachment.

James H. Hardy, *Judge of the Sixteenth Judicial District.*

Impeached 1862, for wilfully and wrongfully making decisions for the benefit of his friends in civil and criminal suits pending before him; for drunkenness upon the bench and other misconduct in office.

He was convicted by a two-thirds vote, under the fifteenth article of impeachment, which charged him with profane language out of court, expression of sympathy with secession, Jefferson Davis and the Confederacy.

Sentenced to removal from office.

Florida.

Harrison Reed, *Governor.*

Impeached 1868, for lying while transacting business with members of the Legislature; for giving commissions to officers in blank; and for embezzlement.

The articles of impeachment were presented to the Senate in the presence of only eight Senators, twenty-four being the entire number of the Senate when full, but several elected being disqualified by the acceptance of inconsistent offices, and vacancies existing also through resignation, so that eight was a majority of the number of Senators in office. By the state Constitution on impeachment of the Governor, he was suspended from office until the end of the trial. Immediately, the Lieutenant-Governor issued a proclamation that he was acting Governor. Governor Reed refused to surrender possession of his office and requested an opinion of the Supreme Court on the question of whether a quorum of the Senate had been present when the impeachment was presented, and whether the proceedings had the effect of suspending him from office. The Lieutenant-Governor wrote the court, claiming that it ought not give a legal opinion upon the questions which were within the exclusive jurisdiction of the Senate and Assembly. The court held unanimously that no quorum of the Senate was present when the impeachment was presented, and, consequently, Governor Reed had not been suspended from office.

In the Matter of the Executive Communication of the 9th of November, 1868, 12 Florida, 653.

In the meantime the Legislature had adjourned, and when it reconvened, both houses recognized Governor Reed in office, and the impeachment was abandoned.

Georgia.

Henry Osborne, *Judge Superior Court, Camden County.*

Impeached 1791, for falsification of election returns.

Convicted, removed and disqualified for thirty years, and fined $500 to defray expenses of impeachment.

John Loving, Samuel Jackson and Fleming F. Adrian, *Commissioners of Fraction Sales.*

Impeached 1825, for retention of moneys collected by them as cash payments for sales of fractional parts of surveys; for withholding large number of State grants so that they might execute complete titles to the purchasers of said fractional surveys, and for the mutilation of records, etc.

Acquitted.

Washington L. Goldsmith, *Comptroller General.*

Impeached 1879, for the collection of illegal fees; for making false returns, and converting to his own use moneys collected as insurance taxes and fees which belonged to the State, etc.

Demurrer to several articles, which was sustained as to one and overruled as to all of the others.

Court permitted evidence of offenses charged in articles which were committed during a term of the same office preceding that then held by the respondent.

Convicted, removed and disqualified.

John W. Renfroe, *State Treasurer.*

Impeached 1879, for corruptly receiving commissions from banks in return for depositing with them State funds.

Acquitted.

Illinois.

Theophilus W. Smith, *Justice of the Supreme Court.*

Impeached 1833, for permitting his son, then a minor, to bargain off the office of Clerk of the Circuit Court of Madison County, and to hire another to do the work thereof at $25 a month, reserving the fees of said office to himself. For committing a Quaker to jail and certifying that he was incompetent to serve as a juror, by reason of want of soundness of mind, because he presented himself to the court with his hat on, and other improper conduct in office.

Acquitted.

Iowa.

John L. Brown, *Auditor of the State of Iowa.*

Impeached 1886, for failure to keep proper accounts and to make reports of office; for bribery and for other misconduct in office.

Acquitted.

Kansas.

Charles Robinson, *Governor.*

Impeached 1862, for complicity in the sale of bonds of the State of Kansas, par value $56,000, to the United States, at eighty-five per centum upon their amount, of which the State only received sixty per cent, the remainder being retained by one Stevens, a leading Kansas politician, who made the sale of the bonds.

Acquitted upon the ground that there was no evidence of his complicity in the act.

John W. Robinson, *Secretary of State* and George S. Hilyer, *State Auditor.*

Impeached in 1862 for their complicity in the bond transaction above described. Each of them was convicted and removed from office.

Theodosius Botkin, *Judge of the Thirty-second Judicial District.*

Impeached 1891, for habitual drunkenness both on and off the bench, and for other misconduct in office.

Demurrers were sustained to the articles, which charged drunkenness when not engaged in discharge of his official duties; the illegal purchase of intoxicating liquors and the frequenting of places where he knew that liquor was illegally sold.

Acquitted.

The case is interesting as giving a view of the state of civilization in Kansas at that time.

Louisiana.

Benjamin Elliott, *Judge of the City Court, City of Lafayette.*

Impeached 1844, for failing to keep records of the naturalization of aliens, and for permitting his clerk to issue false certificates of naturalization.

Convicted and removed from office.

George N. Wickcliffe, *Auditor of Public Accounts.*

Impeached 1870, for bribery and incompetence.

Convicted, removed and disqualified.

Henry C. Warmoth, *Governor.*

Impeached 1872, for forcibly expelling from office the Secretary of State and the issuing of a commission to another in his place. For the unlawful appointment, after the adjournment of the Senate, of an Attorney General and Judge and other officers. For the offer of a bribe of $50,000 to the Lieutenant Governor, etc.

Respondent appeared by counsel and filed exceptions, disputing the legality of the court and the Lower House, on the ground that they were not lawful bodies. The Court rejected these and refused to permit them to be filed. Before any further proceedings the Senate requested the advice of the Chief Justice, whether the trial should proceed after the respondent's term of office had expired.

Chief Justice Ludeling delivered an opinion that it could not, saying: "I question the policy of kicking a dead lion." The Senate adopted this opinion and adjourned.

Massachusetts.

William Greenleaf, *Sheriff of Worcester County.*

Impeached 1788, for converting public money to his own use.

Demurred and pleaded not guilty.

Convicted and removed from office.

R. Hunt, *Justice of the Peace.*

Impeached 1794, for making false record entries.

Pleaded not guilty.

Convicted and suspended for one year.

John Vinal, *Justice of the Peace.*

Impeached 1800, for bribery, etc.

Pleaded not guilty.

Convicted, removed and disqualified.

Moses Copeland, *Justice of the Peace.*

Impeached 1807, for entering judgments in the name of a fictitious endorsee upon promissory notes owned by him. For taking judgments in cases before hour of return of summons and refusing to vacate judgments, and for accepting a bribe of $1.50.

Acquitted.

James Prescott, *Judge of Probate County Court of Middlesex.*

Impeached 1821, for extortion in collection of exorbitant fees in excess of amount authorized by statute. Fifteen articles in all, and he was acquitted on all except two.

Convicted and removed.

Among respondents' counsel were Samuel Hoar and Daniel Webster.

Samuel Blagge, *Justice of the Peace.*

Impeached 1826, for making false certificates that negroes and Indians had appeared before him and declared that they were free and resided in free States.

Acquitted.

Michigan.

Charles A. Edmonds, *Commissioner of the State Land Office.*

Impeached 1872, for corruptly withholding land for sale for the benefit of certain land dealers, in return for moneys paid to himself and deputies and clerks; for furnishing secret information concerning such lands to land dealers, whose profits he shared, and for other corrupt conduct in office. And for depositing in the post office of the United States in the State of Indiana

an obscene newspaper and circulating such newspaper in the State of Michigan, and for other immoral personal conduct.

Acquitted.

Defended by John B. Shipman.

Minnesota.

William Seeger, *State Treasurer.*

Impeached 1873, for concealment of delinquencies of his predecessor in office and loaning State funds to private individuals, some of them his bondsmen.

Seeger resigned, and the Governor accepted his resignation, but the Senate voted twenty-six ayes and ten nays that they would receive no evidence concerning such resignation. Seeger's counsel then filed a plea of guilty with a disclaimer of corrupt motives. The Senate thereupon found him guilty and sentenced him to removal from office.

Sherman Page, *Judge of the Tenth Judicial District.*

Impeached 1878, for maliciously adjourning for four years a trial of an indictment for libel against him, pending the adjournment holding the accusor under heavy bail; for refusing to make orders fixing the number of deputies for the sheriff; for non-attendance upon terms of court, and for preventing the payment of such deputies; for maliciously attempting to induce a grand jury to indict a county treasurer who had committed no crime, and for other improper conduct in office.

Acquitted.

Managers were ordered to furnish a bill of particulars as to certain articles which the respondent moved to quash because too indefinite.

E. St. Julien Cox, *Judge Ninth Judicial District.*

Impeached in 1881, for drunkenness in discharge of his official duties.

Convicted.

Managers were ordered by Court to secure bill of particulars as to certain articles to which the respondent had demurred because too indefinite.

Missouri.

Richard S. Thomas, *Circuit Judge.*

Impeached 1826, for refusing to recognize the rightful clerk of his Court; for putting his own son in the place of the clerk, and for other improper conduct in office.

Convicted.

Albert Jackson, *Circuit Judge.*

Impeached in 1859, for insulting, abusive and tyrannical conduct toward parties and counsel; for imposing illegal imprisonments and refusing writ of habeas corpus, and other improper conduct in office.

Acquitted.

James Proctor Knott was one of the managers on this trial. Judge Jackson defended in person.

Philander Lucas, *Judge Fifth Judicial Circuit.*

Impeached 1872, for certifying bills of costs in blank against a county in his circuit, and for other improper conduct in office.

Respondents answered and defended. Articles were withdrawn at the conclusion of the evidence offered in their support.

Mississippi.

Albert Ames, *Governor.*

Impeached 1876, for failure and refusal to comply with a request of the county treasurer to suspend a sheriff and tax collector, who had failed and refused to make reports and payments of taxes collected; for the appointment of justice of the peace and constables for partisan purposes; for permitting the State Treasurer to remain in office and in possession of the treasury after the State Attorney General had notified the Governor that his bond was insufficient. For defrauding the State of $43,750 by granting contracts without competitive bidding, etc.

Governor Ames wrote to the Legislature that he would resign if the impeachment proceedings were dismissed. The Articles of Impeachment were withdrawn and he resigned.

Alexander K. Davis, *Lieutenant-Governor of Mississippi.*

Impeached 1876, for selling a pardon to a convicted murderer, while the Governor was absent from the state. Although he attempted to resign, he was convicted, removed and disqualified.

Thomas W. Cardozo, *Superintendent of Education.*

Impeached 1876, for embezzlement of state funds.

Pending the proceedings, he resigned, whereupon the Assembly abandoned the impeachment, and the Senate siting as a court, adjourned.

Nebraska.

David Butler, *Governor.*

Impeached 1871, for having stolen state funds, receiving bribes and other corrupt acts in office.

The articles of impeachment in this case were adopted at an extraordinary session, called by the Governor to consider specific legislation. There was no mention in the call of impeachment.

The respondent filed a special plea to the jurisdiction of the court on this ground, which was overruled.

Convicted.

John Gillespie, *State Auditor.*

Impeached 1871, for corrupt connivance with Butler in reference to expenditure of state funds and other misconduct in office.

This impeachment was never tried, and the following year, 1872, was withdrawn by the succeeding house of representatives.

William Leese, *Formerly Attorney-General.*

Impeached 1893.

Articles dismissed upon the ground that no impeachment could be sustained against a man who was not in office.

George Hastings, *Attorney-General;* John C. Allen, *Secretary of State,* and Augustine R. Humphrey, *Commissioner of Public Lands.*

Impeached 1893. Articles charged misappropriation to their own use of public funds.

Acquitted because of lack of proof of criminal intent.

New Jersey.

Henry Miller, *Justice of the Peace.*

Impeached 1830, for prosecuting before another justice of the peace for his own benefit a note which had been placed in his hands for prosecution and collection before himself for the benefit of the true owner thereof; for attempting to intimidate a defendant from appealing and for failing to keep accurate docket of the proceedings in his court.

Convicted and removed.

Daniel C. Cozens, *Justice of the Peace.*

Impeached 1837, for issuing summons, entering judgment without the knowledge or consent of the plaintiff named therein, and for using profane language on the bench.

Acquitted.

Patrick Laverty, *Keeper of State Prison.*

Impeached 1886, for improper relations with women prisoners.

Convicted, removed and disqualified.

Patrick W. Connelly, *Justice of the Peace.*

Impeached March 15, 1895, for assaulting lawyer who had called upon him upon official business, and for falsification and alteration of his docket.

Convicted and removed.

Woodbury Langdon, *Judge Superior Court.*

Impeached 1790, for unlawfully failing to hold court at appointed terms.

Resigned, and proceeding was quashed.

New York.

John C. Mather, *Canal Commissioner.*

Impeached 1853, for corruptly favoring contractors; for letting contracts to personal friends for high prices; for neglecting inspection of canals; for claiming and receiving unlawful mileage and other improper conduct in office.

Answered. General denial.

At opening of trial, counsel for respondent moved to quash first five articles on ground that none of them stated impeachable offenses. The principal point being that the statute under which contracts had been let had been adjudged unconstitutional.

Motion denied.

Acquitted.

Managers.—R. Philfaxed Loomis, Marshal B. Champlain, Orlando Hastings, Solomon B. Noble, Walter Sessions, John McBurney, Daniel P. Wood.

Managers' counsel.— John K. Porter.

Respondent's counsel.— James T. Brady and Rufus W. Peckham.

Robert C. Dorn, *Canal Commissioner.*

Impeached 1868 for conspiracy and bribery in letting contracts and other improper conduct in office.

Respondent moved to quash one article as too indefinite. Granted.

Respondent then moved to quash other articles on the same ground. Denied for reason that motion to quash articles must be made as to all articles at one time.

Acquitted.

Managers.— John C. Jacobs, John F. Little, Edmund L. Pitts, M. P. LeBeau, William S. Clark, William B. Quinn, John L. Flagg, Alpheus Prince.

Managers' counsel.— Smith W. Weed, David J. Mitchell.

Respondent's counsel.— Henry Smith, John H. Reynolds, William A. Beach.

George G. Barnard, *Justice of Supreme Court.*

Impeached 1874, for unlawfully aiding as such Justice, James Fiske and J. Gould to obtain control of the Erie Railroad and Union Pacific Railroad; for improperly favoring certain attorneys; for using obscene and vulgar language while on the bench, and for other improper conduct in office, during his then present term, and during a prior term of the same office.

Respondent moved to quash articles charging improper conduct during a prior term of the same office.

Denied.

Convicted, removed and disqualified.

Managers.— Thomas G. Alvord, W. W. Niles, Albert L. Hays, David B. Hill, James W. Husted, John C. Jacobs, Cyrillo S. Lincoln, L. Bradford Prince and Commodore P. Vedder.

Managers' Counsel.— Josiah M. Van Cott, Daniel Pratt, John E. Parsons, Albert Stickney.

Respondent's Counsel.— William A. Beach, John H. Reynolds, William O. Bartlett and Rufus F. Andrews.

North Carolina.

William W. Holden, *Governor of North Carolina.*

Impeached 1870, for wrongfully proclaiming counties of Alamance and Caswell in insurrection and occupying the same by military force; for a causing unlawful arrests; for refusal to obey writs of habeas corpus, etc.

Trial interesting as it reveals Ku Klux secrets.

Convicted, removed and disqualified.

Edmund W. Jones, *Judge Superior Court, Second Judicial District.*

Impeached 1871, for drunkenness in public places. A few days after impeachment he resigned, but the Governor refused to accept his resignation unless articles of impeachment were disposed of. The House, thereupon, withdrew the articles.

Ohio.

Calvin Pease, *Presiding Judge, Third Circuit of Ohio.*

Impeached 1808, for deciding that a law giving Justices of Peace jurisdiction of a claim for more than twenty-five dollars and to prevent plaintiffs in other courts from recovering costs when they recovered judgment for more than twenty dollars and less than fifty dollars, was repugnant to both the State and Federal constitution, and consequently void.

Answered, admitting facts and alleging that he only did his judicial duty as he saw it.

Acquitted.

Judge Tod.

Impeached at about the same time and for similar charges was also vindicated.

JOHN THOMPSON, *Judge.*

Impeached 1811, for arbitrarily and illegally restricting counsel, in defending trial of one James Graham for larceny, to five minutes, for the purpose of summing up, against the respectful objection of such counsel; for refusing to sign a bill of exceptions when legally tendered, and making improper erasures in such bill of exceptions, and for other improper conduct as a judge.

Acquitted.

JAMES FERGUSON, *Justice of the Peace.*

Impeached 1813, for unlawful discharge of persons arrested under a warrant for assault; for refusing to permit the complainant in same case to testify on the part of the state, and for other improper conduct as a justice of the peace.

Acquitted.

PENNSYLVANIA.

FRANCIS HOPKINSON, *State Judge of Admiralty.*

Impeached 1780, for accepting bribes and presents. Charges dismissed for lack of proof. Court concluded their decision with an opinion expressing their disapproval of the acceptance of presents by public officers.

James Wilson, afterwards Justice of the Supreme Court, U. S., and Jared D. Ingersol were among attorneys for respondent.

JOHN NICHOLSON, *Comptroller General.*

Impeached 1793, for improper recognition of New Loan certificates, which had been issued in pursuance to previous act of the Legislature, which had been annulled by a later act. For certifying that they were redeemable, and for appropriating the proceeds of some certificates to his own use.

Acquitted, but he resigned immediately thereafter.

On the same day, both houses of the Legislature passed a resolution for his removal as comptroller. Upon the Governor being notified of this action, he advised the legislature that the respondent had superseded the removal by resigning his office.

Alexander Addison, *President of the Court of Common Pleas in the Fifth Judicial District of Pennsylvania.*

Impeached 1802, for making political harangues in addressing grand juries, and for insulting associate judges in court.

Convicted and removed from office.

Prosecution conducted by Alexander J. Dallas and McKean, as counsel for house of representatives. Addison defended himself in person with great vigor and ability.

Challenge of members of court not sustained.

Edward Shippen, Jasper Yeates, and Thomas Smith, (*being all of the Judges of the Supreme Court of Pennsylvania, except Judge Breckenridge, the only democratic member thereon*).

Impeached 1804, for illegally adjudging one Pasmore guilty of contempt and sentencing him to jail for thirty days — the contemptuous action not being in the presence of the court. This was apparently a political impeachment and failed.

Respondents were acquitted.

Walter Franklin, *President, and* Jacob Hibshman, *and* Thomas Clark, *Associate Judges of the Court of Common Pleas of Lancaster County.*

Impeached in 1816, for improperly refusing to compel certain attorneys to pay over client's money which they had collected and unjustly retained.

Acquitted.

The same Judge Walter Franklin was again impeached in 1825 for delaying administration of justice.

Acquitted.

Robert Pommer, *President Judge of the Third Judicial District.*

Impeached 1825, for refusal to furnish his reasons for a report which he made as referee and for dismissing exceptions to such report, for the reason assigned by the party in whose favor the report was made. For insulting litigants in court; for compounding a felony; for intimidation of jurors, etc.

Acquitted.

Silas Chapman, *President Judge of Eighth Judicial District.*

Impeached in 1826, for illegal arrest. For refusal to file his opinion in case where unsuccessful party desired to review by writ of error, and for favoritism on the bench.

Acquitted.

Tennessee.

Thomas H. Frazier, *Judge of Criminal Court of Davison County.*

Impeached 1867, for issuing a writ of habeas corpus against members of the Legislature, who had been imprisoned by the Legislature, and for refusing to accept a return of the Sergeant-at-Arms of the Legislature, stating said fact, and punishing said Sergeant-at-Arms for contempt of court.

Convicted, removed from office and disqualified.

West Virginia.

John S. Burdett, *Treasurer of West Virginia.*

Impeached 1875, for agreeing to keep State moneys on deposit in banks which would loan moneys to his son, and for accepting gratuities; careless conduct of the business of his office.

Convicted, removed and disqualified during remainder of term.

Edward A. Burdett, *Auditor West Virginia.*

Impeached 1876, for failure to keep account of moneys received and disbursed by him. For refusing to make official reports, etc.

Acquitted.

Wisconsin.

Levi Hubbell, *Justice of Second Judicial Circuit.*

Impeached 1853, for consulting with one of the counsel in a case pending before him during and after the trial, at the same time borrowing from the same counsel $200. For presiding and adjudicating cases in which he was personally and pecuniarily interested; for other improper and indecent conduct in office.

Acquitted.

Mr. Kresel.— May it please the Court, I shall confine myself to an endeavor to answer so much of the respondent's present contention as is set forth in that paragraph of his special plea which is marked "Second." That part of it reads as follows:

> "And this respondent in further response to the first Article of Impeachment against him says,
>
> "That this Court ought not to take cognizance of the said Article, and this respondent objects to the sufficiency thereof for this: That at the time of making and filing the statement therein referred to, there was nothing in the laws or statutes of this State that required this respondent as a candidate for the office of Governor of the State of New York, to make and file any statement in which should be set forth the contributions of moneys received by him while such candidate."

That refers to the first article of impeachment, and then comes this objection to the second article, to wit:

> "And this respondent in further response to the second article of impeachment against him says: That this Court ought not to take cognizance of the said article, and this respondent objects to the sufficiency thereof, because at the time of making the statement and affidavit or oath referred to in said article there was nothing in the laws or statutes of this State that required him to make oath or affidavit to any statement setting forth contributions made to or receipts of money or property received by him, and that the statement to which the affidavit was attached, as set forth in said second article, was not a statement required by law to be made by this respondent."

Now, in support of these objections, it has been argued by the learned counsel for the respondent that no offense is alleged under Article I, because Section 546 of the Election Law, under which that article is drawn, does not require that a candidate should report moneys received by him as contributions; and that, therefore, an omission of such contributions is no offense under that statute; and that Article II states neither a violation of Section

776 of the Penal Law, under which that article is drawn, nor does the charge alleged amount to the crime of perjury.

The argument is that this second article states no offense under Section 776 of the Penal Law, because by the terms of that statute a candidate is required to report only contributions made by him, and not contributions made by others to him; and that, therefore, an omission to state the contributions made to him, is no violation of that statute.

It is further argued that this article does not set forth the crime of perjury, because the oath annexed to the statement in question was not an oath required by law.

We don't understand that the respondent challenges the form of Articles I and II, but that the argument is directed solely to the substance of the allegation, hence we shall spend no time in an attempt to prove to the Court that Articles I and II are proper in form in accordance with the precedents in impeachment proceedings.

Now, then, as to the contention that Article I states no offense under section 546 of the Election Law, this article charges that the respondent, while Governor-elect of the State, wilfully and knowingly filed with the Secretary of State on November 13, 1912, a false statement of moneys received, contributed and expended by the respondent during his candidacy for that office. That the statement showed receipts of $5,460 from 68 contributors, and disbursements of $7,724.09, but omitted 11 contributions actually received by the respondent, aggregating $8,500. This article clearly charges an impeachable offense, to wit, a violation of section 546 of the Election Law which had its origin in the Corrupt Practices Act, now included as Article XX of the Election Law, and which provides as follows:

> "Statement of campaign receipts and payments. The treasurer of every political committee, which, or any officer, members or agent of which in connection with any election, receives, expends or disburses any money or its equivalent, or incurs any liability or its equivalent, shall, within twenty days after such election file a statement setting forth all the receipts, expenditures, disbursements and liabilities of the committee, and of every officer, member and other person

in its behalf. In each case it shall include the amount received, the name of the person or committee from whom received, the date of its receipt, the amount of every expenditure or disbursement, the names of the persons or committee to whom it was made, and such expenditure or disbursement. Expenditures or disbursements in sums under $5 need not be specifically accounted for by separate items, except in the case of payments made for account of or to political workers, watchers or messengers."

The President.— If you would step to that side, I would hear you much more distinctly.

Mr. Kresel.—Very well.

Now, section 546 ends up with this statement:

"The statement to be filed by a candidate or other person not a treasurer shall be in like form as that hereinbefore provided for, but in statements filed by a candidate there shall also be included all contributions made by him."

The purpose of the Corrupt Practices Act, taken in conjunction with article 74 of the Penal Law is two-fold; first, to regulate and restrict the collection and distribution of campaign funds, both as to amount and manner of use; second, to insure publicity through public report and accounting of every dollar used by anybody in connection with the campaign.

A brief summary of the law may serve to show how these purposes are accomplished. The Corrupt Practices Act begins by providing for a "political committee" which shall include every combination of three or more persons co-operating to influence an election (sec. 304). Section 541 of the Election Law requires any person, including a candidate, who contributes any money to a campaign, to file a public statement thereof unless he makes the contribution either to a political committee or a candidate.

Section 542 restricts the character of the personal expenses which may be incurred and paid by a candidate, and concludes with the words:

"A candidate shall in any event file a statement of any contributions made by him."

Section 544 requires all officers or agents of a political committee or candidate who receive or disburse money to account therefor to the committee or candidate.

Section 545 requires vouchers for all expenditures, and then follows section 546, which provides that the treasurer of every political committee which received or disburses campaign money shall, within twenty days after election, file an itemized statement of such receipts and disbursements, date and donor, as to each receipt, and the amount, date and donee, as to each disbursement. The section further provides:

> "The statement to be filed by a candidate or other person not a treasurer, shall be in like form as that hereinbefore provided for, but in statements filed by a candidate there shall also be included all contributions made by him."

Now, it is claimed on behalf of the respondent that this provision of section 546 to the effect that the statement to be filed by a candidate or other person not a treasurer, shall be in like form as that provided for in section 546 to be filed by a treasurer does not require a candidate to give an account of contributions made by other persons and given to him.

Now, it would seem that the language of this last sentence in section 546 of the Election Law is perfectly clear and free from doubt. The provision "the statement to be filed by a candidate shall be in like form as that hereinbefore provided for" can have but one sensible meaning, and that is that the information required by that statute to be given by a candidate shall be of the same nature as required of the treasurer of a political committee. Otherwise the provision is meaningless. The words "shall be in like form" certainly cannot mean that the paper upon which the candidate's statement is to be prepared shall be of the same form as the paper upon which a report of a treasurer of a committee shall be prepared, or that it shall be printed in the same form, or that the ink shall be the same or that the size of the paper shall be the same. It must be given some sensible construction, and the only sensible interpretation is that the statement to be filed by a candidate, should set forth, just as the statute requires the statement to be filed by a treasurer of a po-

litical committee, and should set forth all the receipts, expenditures, disbursements and liabilities of the candidate in the matter of his election, and that the statements shall include the amount received as contributions, the name of the person or candidate from whom received, the date of the receipt, the amount of every expenditure and disbursement, the name of the person or candidate to whom it was made, and the date thereof.

It has been argued for the respondent that this provision of section 546 must be read in connection with the provisions of the preceding sections in the same article, to wit, the Corrupt Practices Act, and it has been argued that section 541 of that article sustains their contention, and that all that a candidate is required to report are contributions made by himself and disbursements made by himself. But applying the same rule of construction which the learned counsel involves in support of his argument, and reading in connection with sections 546 and 541 the provisions of section 544 in the same article, it becomes clear that even if it be admitted that the language of section 546 needs interpretation or construction, such construction must be that the statement required of a candidate must include not only contributions made by him, but also those made to him.

Now, section 541 provides among other things that any person, including the candidate, who expends or contributes any money in aid of an election of a public official except the chairman or treasurer of a political committee, or to a general agent authorized by such committee, or to a candidate or to an agent of a candidate, must file the statement such as is required by section 546. In other words, this section provides that if John Smith had made a contribution to the respondent herein, who was a candidate for election, John Smith need not file a statement of such contribution because he gave it to a candidate. And the question therefore still remains if John Smith is not to report it, who must account for and file a statement of such contribution?

Now, the learned counsel for the respondent say that the candidate, the respondent here, need make no such statement here. The provisions of the statute would indicate that as long as the contribution is made to a candidate or to an agent of a candidate, the burden is thrown upon such candidate to report such contribution.

The whole history of the legislation upon the subject of campaign contributions and campaign expenses merely shows that the one purpose of it was to give the widest possible publicity to such contributions and expenses. The public wants to know and is entitled to know who gave money to help elect our public officials. If the respondent's contention is correct, namely, that he as a candidate was under no obligation to report contributions made to him personally, then it would follow that contributions made by third parties to candidates direct would never see the light of day, and would never become public, and the whole purpose of the law would be defeated. But the statutes are not so impotent. Section 544 to which I call attention, provides as follows:

> "Whoever, acting as an officer or member or under the authority of a political committee, or under the authority of a candidate for public office, or for any office, whether public or not, to be voted for at a primary election, or for nomination at a primary election or convention, or for nomination by petition under the provisions of the Election Law."

Now, then, going back to the beginning,

> "Whoever receives any money or its equivalent or promise of the same, or expends or incurs any liability to pay the same, shall,"

Do what?

> "Shall within three days after demand and in any event within fourteen days after such receipt and expenditure, promise or liability, give to the treasurer of such candidate or to such candidate or an agent authorized by him, a detailed account of the same."

An account of what? An account of such receipt, expenditure, promise or liability.

> "He shall give a detailed account of the same with all vouchers required by this article."

Now, what is to be done is that all that shall be a part of the accounts and files of such treasurer or such candidate.

In other words, the statute provides that an agent of a candidate who receives a contribution shall within fourteen days make

an account up for the candidate and by the candidate to be reported.

Now, it would seem, therefore that this section clearly contemplates that a candidate shall report contributions made to him or to his agent or other persons, because the statute provides that within fourteen days after such receipt, expenditure, promise or liability, the agent shall give a detailed statement to the candidate with all vouchers required by this article. And the statute proceeds to provide that this shall be a part of the accounts and files of such candidate.

"A detailed account of the same" must necessarily refer to the preceding language in the statute, namely, an account of the receipts, expenditures, promises or liabilities, and the statute provides that the candidate shall make such account part of the accounts of such candidate. So not only is it clearly provided by section 546 that a candidate must report contributions received by him, but a reference to the other provisions in the Corrupt Practices Act clearly indicates that such was the intention of the framers of this law and such was the plain provision of it.

Sections 550 to 560 provide a summary method of enforcement of the requirements of the Corrupt Practices Act by proceedings for contempt as follows:

If any person or committee either fails to file a statement at all or files a false or defective statement or fails to comply with any other of the requirements of the article, the Supreme Court or any justice thereof may compel compliance with the law, upon application with the Attorney-General, district attorney, any candidate or any five qualified voters at the election. The court or justice is vested with summary jurisdiction to inquire into the facts and circumstances of such alleged violation of the law, and the proceeding is given a preference over other causes both in the court of original jurisdiction and on appeal.

If the court finds that the offense was not wilful, it shall require the offender forthwith to comply with the law. If the offense was wilful or if the offender fails to comply with the court's judgment, the court may impose a fine not exceeding $1,000 or imprisonment for not more than one year, or both.

Thus we have a complete scheme for regulation of and publicity

regarding every dollar used for campaign purposes. Every candidate must account for moneys received and disbursed by him. Every political committee must account for moneys received and disbursed by it. Every person who contributes money independently of a candidate or committee must report the contribution. For a wilful violation of the act the court may summarily punish by fine or imprisonment or both.

Turning now to Article I of the Articles of Impeachment, we find the respondent charged with a gross violation of the provisions of the Election Law. As Governor-elect of the State he did file with the Secretary of State a statement purporting to conform to the provisions of the statute, in which were set forth receipts from 68 contributors of $5,460; and expenditures of $7,724.09, but this statement is alleged to have been false and a wilful violation of the statute, in that the respondent omitted therefrom 11 other contributions which he had received, aggregating $8,500. That such conduct amounts to an impeachable offense is, we submit, self-evident. The acts charged would have made the respondent liable to a fine of $1,000 and imprisonment for one year. Can it possibly be argued that this high Court is to be stripped of power to punish for such an offense, and that the offender is to go free, merely because a contempt proceeding was not brought in the precise manner and within the precise period required by the statute? Surely the power of a sovereign people is weak indeed, if such an offender can be restored to the executive chair of this State.

The concluding paragraph of Section 546 reads as follows:

> "The statement to be filed by a candidate or other person not a treasurer shall be in like form as that hereinbefore provided for, but in statements filed by a candidate there shall also be included all contributions made by him."

The term "like form" used in Section 546 of the Election Law means not only that the candidate's statement must be made out on a paper similar in form to the paper used by a treasurer of a political committee, but that the candidate's statement must contain the same items of information as are required in the statement of a treasurer of a political committee.

Our analysis of the statute has shown that publicity of campaign funds is secured through a three-fold accounting; first by candidate, second by political committee, third by every person who gives independently. Obviously, a political committee need only account for money received and the method of disbursement, for it cannot in the nature of things have money of its own. Hence the provisions of section 546, which require the treasurer of the committee to file a statement showing the receipts and disbursements: Naturally a candidate must file a similar statement of receipts and disbursements; otherwise a contribution made to a candidate by a private person would never become public, and the whole purpose of the statute would be defeated. Hence the provision in the concluding section of section 546 that "The statement to be filed by a candidate or other person not a treasurer, shall be in like form as that hereinbefore provided for." But a candidate may have private funds and may wish to make a private contribution apart from the money received and disbursed in connection with his own campaign fund.

Therefore, the additional requirement "but in statements filed by a candidate there shall also be included all contributions made by him." Whether or not the Penal Law requires a candidate to account for his campaign receipts there can be no question that the Election Law does require such.

In form, the article is not open to criticism. It may not measure up to the niceties of a pleading in the form of an indictment, but that we have shown is not requisite in articles of impeachment. The article alleges:

(1) That the respondent was a candidate for a certain public office.

(2) That having been such candidate it was his duty to file the statement required by section 546 of the Election Law.

(3) That he filed what purported to be such a statement, and

(4) That the statement was false, as he knew in certain particulars set forth at length.

Here, then, in plain and concise language is set out every element of a violation of this particular statute in a form in which,

we venture to say, even an indictment would be proof against demurrer.

We submit, therefore, that article I is good both in form and substance.

We now come to a consideration of article II.

This article charges that the respondent, while Governor-elect of the State, filed in the office of the Secretary of State, on November 13, 1912, a statement under oath, purporting to show his campaign receipts and expenses in which he set forth that such receipts amounted to $5,460 from sixty-eight contributors, and that the expenditures were the items, aggregating $7,724.09. The article charges that this statement was false to the knowledge of the respondent, in that he had received contributions from the various persons whose names are set forth in the article, such contributions aggregating the sum of $8,500, and that he committed perjury in swearing to a false affidavit attached to such statement.

Now, it is contended on behalf of the respondent that section 776 of the Penal Law, under which this article is framed, and was apparently drawn, does not require a candidate to report contributions received by him, but only contributions made by him, and that, therefore, the omission of certain contributions received by him cannot be a violation of this section; and that section 546 of the Election Law does not require a candidate's statement to be under oath, and, therefore, no perjury can be predicated upon the false affidavit which is attached to his statement.

Now, section 776 provides:

> "Failure to file a candidate's statement of expenses. Every candidate who is voted for at any public election held within this State shall, within ten days after such election, file, as hereinafter provided, an itemized statement showing in detail all the moneys contributed or expended by him, directly or indirectly, by himself or through any other person, in aid of his election. Such statement shall give the names of the various persons who received such money, the specific nature of each item, and the purposes for which it was expended or contributed. There shall be attached to such statement an affidavit setting forth in substance that

the statement thus made is in all respects true, and that the same is a full and detailed statement of all moneys so contributed or expended by him, directly or indirectly, by himself or through any person, in aid of his election. Candidates for offices to be filled by the electors of the entire State or any division or district thereof, greater than a county, shall file their statements in the office of the Secretary of State. The candidates for town, village and city offices, excepting in the city of New York, shall file their statement in the office of the town, village or city clerk, respectively, and in cities wherein there is no city clerk, with the clerk of the common council of the city wherein the election occurs. Candidates for all other offices, including all officers in the city and county of New York, shall file their statements in the office of the clerk of the county wherein the election occurs, unless the county has a commisioner of election, in which case candidates shall file their statements in the office of such commissioner of elections."

Now, the statement filed by the respondent contains a list of 68 contributions aggregating $5,460, and an itemized list of the expenditures, aggregating $7,724.09, and attached to said statement is an affidavit, sworn to by the respondent, before a Commissioner of Deeds of the City of New York, which reads as follows:

"State of New York,
City and County of New York, } ss.

Wm. Sulzer, being duly sworn, says that he is the person who signed the foregoing statement, that said statement is a full and detailed statement."

Of what?

"Of all moneys received, contributed or expended by him."

Now, leave out "contributed and expended" and read it

"that said statement is a full and detailed statement of all moneys received by him, directly or indirectly, by himself or through any other person in aid of his election.

(Signed) Wm. Sulzer."

Sworn to before a commissioner of deeds on the 13th day of November, 1912.

Neither of the objections urged against this article is tenable.

Now, the objection that section 776 of the Penal Law refers only to contributions made by candidates themselves is too narrow, and violative of the very purpose for which the statute was enacted. The history of the entire legislation upon the subject of publicity of moneys received and spent in and of elections of public officials, indicates a clear intention of the legislature to give to such receipts and expenditures the widest possible publicity, and any statute upon this subject must receive at the hands of the court a liberal construction which would tend to carry out this unmistakable legislative intent; unless, therefore, the language of section 776 clearly admits of no other interpretation than that intended for it by the respondent, the court must give to that section the liberal construction claimed for it by the Managers.

The statute requires the filing of " an itemized statement showing in detail all the moneys contributed or expended by him, directly or indirectly, by himself — or through any other person in aid of his election." We contend that the word "contributed" is not modified by the phrase " by him," but that that phrase refers only to the word " expended " immediately preceding the phrase, and that the word " contributed " is modified in that sentence only by the last phrase in the sentence, " in aid of his election." The disjunctive " or " separating the words " contributed " and " expended " indicates clearly the intent of the legislature not to limit or qualify the meaning of the word " contributed " in the same way as the word " expended " is qualified. " Contributed " in that sentence means contributed by anybody while " expended " refers only to expenses made by a candidate himself.

This construction harmonizes with the whole scheme and the purpose of the legislative enactment regulating campaign funds and the publicity to be given to them, while the construction contended for by the respondent defeats that very purpose. The object is to disclose to the public not only the amounts and objects of the candidate's expenditures, but the source of all contributions received by him. Furthermore, a statement of the receipts is necessary and important in order to check up his reports of disbursements and thus minimize the possibility of fraud and corruption.

The provisions of Section 775 of the Penal Law immediately preceding the section now in point are significant as showing such legislative intent.

Section four of section 775 prohibits

> "any gift, promise or contribution upon the condition or consideration of receiving an appointment — to a public office or a position of public employment."

Section 776 then proceeds to require every candidate to file "an itemized statement showing in detail all the moneys contributed or expended by him." Thus we have in the former section a prohibition against contributing money in consideration of a promise of appointment and in the latter section a requirement that every candidate shall report all contributions received by him in order that the public may watch his conduct in office and may judge whether his appointments are influenced by contributions which he has received during his candidacy.

But assuming for the purposes of the argument that the construction claimed for this section by the respondent is the correct one, what follows? Only this: That the false statement filed by him is not brought strictly within the letter — though it is surely within the spirit of the provisions of section 776 of the Penal Law, and that, therefore, he could not be convicted of the crime defined by that statute. But the question whether crimes only are impeachable offences I think I may say, this court is going to decide in only one way.

It is now quite beside the question that the acts charged in this article do not constitute an offence under section 776 of the Penal Law. The statement is nevertheless false and it is charged that the respondent knew it was false when he made it. Is he to escape condemnation in this court for knowingly making this false statement under oath because forsooth a strained and narrow construction of the language of the statute keeps him just out of the grasp of the criminal law?

Now, so much for the objection under section 776.

Now, the question as to the perjury.

The claim that this article must be quashed because it charges that the respondent committed perjury in swearing to the false affidavit is surely untenable.

Perjury is defined as follows by section 1620 of the Penal Law, omitting that part of the statute which is not relevant:

> "A person who swears * * * that no * * * affidavit or other writing by him subscribed is true * * * on any occasion on which an oath is required by law or is necessary for the prosecution or defense of a private right or for the ends of public justice, or may lawfully be administered and who * * * on such * * * occasion, wilfully and knowingly * * * deposes * * * falsely, in any material matter, or states in his * * * affidavit, * * * any material matter to be true which he knows to be false, is guilty of perjury."

Article II charges that the respondent made and filed a statement which he swore was

> " in all respects true and that the same is a full and detailed statement of all moneys received, contributed or expended by him, directly or indirectly, by himself or through any other person in aid of his election."

When in truth and in fact the statement was not a full statement of all moneys contributed, since there were omitted from the statement contributions amounting to $8,500.

The charge contains every element of the crime. The respondent has sworn that an affidavit or writing by him subscribed is true. The oath is required by Section 776 of the Penal Law, and he has wilfully and knowingly stated in his affidavit a material matter to be true which he knows to be false, to wit, that the accompanying statement was in all respects true and was a full and detailed statement of all moneys received or contributed or expended by him in aid of his election, whereas, in fact, it was an incomplete and false statement of such receipts and contributions.

But it is argued that our interpretation of Section 776 of the Penal Law is incorrect, and that the only statement required of a candidate by that section is a statement of moneys contributed (by him) or expended by him in aid of his election. For the reasons hereinabove set forth we contend that such an interpretation of the section is illogical and strained and tends to defeat the

very purpose of the statute. But even if this construction of the section be accepted we still maintain that the respondent's conduct as charged in Article II amounts to the crime of perjury. The respondent certainly professed and intended to swear a false statement of his campaign receipts. That he was required to file such a statement of receipts by the Election Law, Section 546, if not by the Penal Law cannot be questioned. Because he combined the two statements in one and swore to the correctness of the whole, can we pick out one false item and say that as to this he did not perjure himself while as to other false items he might have or did perjure himself.

And at this point it might not be amiss to call the Court's attention to the circumstances surrounding the adoption of the form of statement which was used by the respondent in order to show that not only did the respondent intend this statement to be taken as an accurate account of all contributions received by him, but that the persons officially charged with the duty of adopting a form to be used by candidates have acted under the belief that Section 776 of the Penal Law required a statement under oath of all contributions received by a candidate.

And curiously enough, in the adoption of this very form of statement one of the learned counsel for the respondent played no small part. We learn from the Secretary of State's office and from the Attorney-General's office that when the Corrupt Practices Act was enacted in 1909, and Section 776 was re-enacted in the Penal Law, it became the duty of the Secretary of State, pursuant to the requirements of the Corrupt Practices Act to adopt a form to be used by candidates in making their report. The Corrupt Practices Act, as is well known, was enacted largely through the instrumentality of an association known as the "Law and Enforcement League." Our brother, Judge Herrick, now of counsel for the respondent, was at that time the counsel to the Law and Enforcement League. The Secretary of State, co-operating with the Attorney-General, drew up the form of statement which is now in use, and which was used by the respondent in making his report, and submitted the form to Judge Herrick for his approval, and Judge Herrick approved it, and, it will be noted, that the printed

form contains a copy of section 776 of the Penal Law and contains the form of affidavit which was made by William Sulzer:

> ". . . . . being duly sworn, says that he is the person who signed the foregoing statement, that said statement is in all respects true and that the same is a full and detailed statement of all moneys received, contributed or expended by him, directly or indirectly, by himself or through any other person in aid of his election."

Thus, the learned counsel for the respondent was at that time at least of the opinion that section 776 did require a candidate to report under oath all moneys received, contributed or expended by him.

Mr. Herrick.— Have you any objection to my interrupting you.

Mr. Kresel.— No, I don't think so.

Mr. Herrick.— I was not counsel for that League and no such form was submitted to me.

The President.— I think it is just as well to avoid these personalities.

Mr. Herrick.— It is not a personality, may it please the Court, but simply a correction.

The President.— I think it is wiser not to go into it. You can refer to their decisions, but I think it is wiser not to refer to these particular gentlemen, on the one side or the other, as having decided anything, and surely there is no law of estoppel that counsel having argued a point in one case may not argue the reverse of it in another case.

Mr. Kresel.— But even if the statement of receipts was not expressly required by the Penal Law, it certainly became a material part of a statement which was required by that law, and which he made and filed and swore to in accordance with the provisions of that law. Moreover, the statement of receipts, as we have

shown above, is important and material as tending to support the accompanying statement of expenditures and disbursements. If in fact the respondent received contributions aggregating $8,500 in addition to the contributions for which he accounts, then manifestly the statement of expenditures must be false and incomplete, for he would then have received upwards of $13,000 in his campaign fund and accounts for the disbursement of only $7,700.

Under the broad interpretation which has been placed upon the perjury statute by the courts of this State, we submit that the acts charged unquestionably constitute perjury.

The Court of Appeals as recently as 1903 has said:

> "It is to be observed that the statute has essentially enlarged the rule which existed at common law in relation to the crime of perjury. The evident purpose of the legislature was to adopt a statute which would include and provide for the punishment of the act of taking a false and corrupt oath in this State whenever it was required or permitted by our laws or by the laws of any other state or commonwealth that might be regarded or treated as valid here. In other words, the purpose of this statute was to include within the definition of the crime of perjury the taking of any and every false and corrupt oath unless it was purely voluntary and extra-judicial, in not being required, authorized or permitted by any law that might be enforced or carried into effect in our jurisdiction or elsewhere, or in not being necessary for the prosecution or defense of a private right or for the ends of public justice wherever sought to be administered."

People v. Martin, 175 N. Y. 315, 319.

In Wood v. The People, 59 N. Y. 117, the Court of Appeals held that it is not necessary that the false statements tend directly to prove the issue in order to sustain an indictment for perjury; if circumstantially material or if it tends to support and give credit to the witness in respect to the main fact it is perjury. Whereas in the case at bar, as we have pointed out above, the

false statement as to receipts is circumstantially material in that it tends to support and give credit to the affiant in respect to the main fact, viz.: the amount of expenditures and disbursements.

We, therefore, submit that under a logical and reasonable construction of section 776 of the Penal Law the sworn statement of campaign receipts was a necessary and vital part of the statement required to be filed by the respondent and that even if this court construes that section otherwise, nevertheless the items in question were material and the false statement thereof constituted perjury. And even if the respondent's conduct charged in the two articles was not such as would lay him open to conviction in a criminal court for violation of section 546 of the Election Law or section 776 of the Penal Law or of perjury, yet we say that the acts charged are impeachable offenses, for such an offense need not be a crime. Can it be contended for a moment that a Governor-elect of this great State, who files in the office of the Secretary of State, to become a public record, a false statement under oath, knowingly and wilfully and fully believing that such statement under oath was required by the laws of the State, may be saved from impeachment, acquitted before this Court and restored to his great office merely because he might legally have omitted the items in question and embodied them in a companion statement to be filed in the same office for the same purpose, but no under oath. Granting for the sake of argument that his conduct just escapes by a technicality the legal crime of perjury, does it not merit condign punishment? May the offender be heard to argue upon such a flimsy basis that he is still fit to administer the affairs of the State and to receive and deserve that public confidence and respect without which no executive could properly fill that high office.

Mr. Parker.— Mr. Presiding Justice, may I have a few minutes?

The President.— Yes.

Mr. Parker.— Not over seven or eight.

The President.— Very well.

Mr. Parker.— May it please this High Court of Impeachment: It is not really to add anything to that which has been said by my associates that I ask your attention for a very few minutes. The argument of Senator Brackett I approved of as well as the argument of Mr. Kresel. But there is one point to which I desire to give emphasis and one upon which I desire to express a personal view, for it is one about which I have not had an opportunity to consult my associates.

I wish to call your attention particularly to section 7 of Article X of the Constitution. It has been considered in your hearing to-day. It is my view that this section 7 has nothing whatever to do with the impeachment provision of the Constitution; that it is a concurrent remedy standing alone by itself.

Now, let me invite your attention, as it has been before a number of times since we came here together, to the impeachment provisions briefly. The first one you will remember provided for the impeachment for mal and corrupt conduct in office. Then came the Constitution of 1821. To it was added three words which were intended to broaden it, so that to "mal and corrupt conduct in office" was added "high crimes and misdemeanors." Then came the year 1846 when the Constitution was again amended. This time all the limitations as to cause upon that provision were stricken out. There were limitations before, less in 1821 than in 1777, but all limitations of every kind were swept out of existence by the amendment of the Constitution in the year 1846, and when the Constitutional Convention was held in 1904 it was continued as it had been before. Then, isn't it necessarily true that from 1846 down to this very date, the Assembly of this State has been at liberty by the express command of the Constitution to impeach for whatever cause it sees fit? Now again, the High Court of Impeachment of this State has been at liberty during the same period of time, covering now over 65 years, to convict for such causes as the High Court of Impeachment deems proper. In that same year, 1846, it is evident from other provisions of the Constitution with which many of you are very familiar I know, and therefore I hate to trespass upon you even for a few minutes, but in that very year, 1846,

there was a feeling abroad in this State that there should be an easier method of getting rid of some of the officials of this State, and so they provided in the very first section — I won't stop to read it — they provided in the very first section of this Article VI as a concurrent remedy, the power upon the two Houses of the Legislature by a two-thirds vote to remove from office a Judge of the Court of Appeals or a Justice of the Supreme Court, to remove from office for cause, the reasons to be stated, but the power of removal was given by that two-thirds vote. Now, while the remedy was concurrent, you find that by this new remedy as against the Courts there was no power of disqualification. There has remained during all the history of the Constitution and of the impeachment provision of the Constitution the right to disqualify for future office as well as the right to expel from office, but in this concurrent provision relating to the removal of the judiciary the power to remove alone is given; the power to disqualify is taken away. This constitutional Convention which worked out the Constitution of 1846 apparently reached the conclusion that there ought to be a like concurrent remedy as to certain of the civil officers of this State. For some reason, whether the constitutional convention failed to agree upon it or not I don't know, but for some reason it did not work out machinery, as it did work it out as to the removal of judges. It provided that the legislature should create that machinery.

Now let me read that section 7 of article 10: "Provision shall be made by law"— that is mandatory. "For the removal for misconduct or malversation in office of all officers except judicial, whose powers and duties are not local or legislative." Now, there was a command laid by that constitution upon the law-making power of this State to provide the machinery by which it may well be, I think it is broad enough in its terms to reach the Governor for it says, "All officers," but it is not at all likely that they had in mind that an attempt would be made to remove a Governor by such method. It was probably intended for the minor administrative officers, but it must be conceded that it is broad enough to include them all; but all the legislature was permitted to do was to work out the machinery by which these

officers should be removed from office, and not disqualified. Now, here are these two systems laying side by side, only a little apart from each other, and it is now suggested, as I understand, that because the Legislature by a provision which was floating for some thirty years in the halls of legislation, from 1851 until 1881, before it become finally a part of the law of this State, now known as section 12 of the Penal Law, that that section in some way or other, despite the intention of the Constitution makers, in thwart of their will to create these two systems, that that has become a part of the perfect system of impeachment, for there has been nothing added to that impeachment provision or machinery for many a long year, and yet it is said that it was possible for the law-making power, the legislative department of the government, which was given authority to work out the concurrent machinery provided by section 7, if it made a mistake in doing it and used some language that it was not authorized to do that was applicable to the impeachment provisions of the constitution, that it has so affected the law upon that subject that despite the plans of those who framed the Constitution who have attempted to preserve it so that it should be broad enough to reach all causes for which a high Court of Impeachment should deem sufficient to remove a public officer, that that scheme has been thwarted by this accident, for accident I am sure you will reach the conclusion it was.

I have no doubt whatever that the framers of section 12 framed it with the idea in mind that they were meeting the command laid upon them by section 7 of article X of the Constitution; but, be that as it may, the Constitution lays out one scheme, one course for the removal and disqualification of officials and perfects it, and then it provides another method by which certain officials are to be removed for misconduct in office and I deny the proposition that it is within the power of the legislature, which is authorized to work in one direction and confined, to attempt to interfere with the other and absolutely completed scheme of the Constitution. The Constitution says, in this direction you shall do certain work, and that of itself prevents it from making any effort to interfere with the other perfect and harmonious scheme.

The President.— Now, Mr. Fox, if you please.

Mr. Fox.— May it please the Court, after listening, as you have been listening now for several hours, no doubt with intellectual delight, yet even intellectual delight too long continued may result in fatigue, I know that I must have your sympathy, and, frankly, if I could consult my own personal preference, and I know that I should be consulting yours if I could, I should leave the matter in the hands of this Honorable Court.

Particularly embarrassing is it to one who has never held official position to be called upon to perform the responsible duty of replying, when he reflects that every one who has addressed the Court to-day has held either the highest judicial position in the State or some sort of official position connected with the administration of the government of the State. It is keenly embarrassing to follow in argument one who has expressed his personal knowledge that he has no personal doubt as to what the makers of the Constitution intended; and it is perhaps better for me, and I know it would be equally acceptable to you, if I take up so far as I may be able to do so the arguments which have been addressed to you, in the inverse order of their delivery.

It has this advantage that at any rate I shall be less likely to misquote what has happened most recently.

Now, the learned and distinguished former Chief Judge of the Court of Appeals who has just taken his seat announced a doctrine which was a little more advanced than that which had been announced by the former learned Assistant District Attorney, whose argument in turn also proceeded considerably beyond that to which his predecessor felt it safe or necessary to go.

If the doctrine just announced be correct, why then, it is quite impossible, it seems to me, to escape the conclusion that an act innocent and lawful when done, might be declared wicked and impeachable by the Assembly, and on conviction the person who did the act might be convicted by this honorable Court. Would that not be an ex post facto law within all the meaning of that term used in the prohibitory clause in the Federal Constitution?

The learned gentleman who preceded him is of the opinion — at least, whether he be of the opinion or not, he presents the argument that the welfare of the State requires this Court to

claim and exercise a jurisdiction and pronounce a judgment the effect of which will be not only to drive from office the individual, but to deprive the people of this State ever to have his services again in any public office. Why? Why? Says my learned friend, even if the present occupant of the Gubernatorial Chair has not committed perjury, he at any rate has made a misstatement of facts, and even though it was an involuntary mis-statement of fact, and even though it was made before he took office, yet the awful judgment of this Court may, at any rate, and he undoubtedly will contend, ought to be pronounced to the extent which I have indicated.

What, gentlemen, would be the result of that? Why, a man who at some time had been, if you please, cast in judgment in an action for false representations with intent to deceive, could never hold public office again.

The counsel for the respondent are not here to argue in favor of immorality, but the greater principle is, is it for this Court or the Electorate to determine what shall keep a man out of office and what shall put him in?

No, gentlemen, far above the question of the innocence or guilt of this defendant or this respondent is the question of the usurpation of power by the Assembly.

To the first question, the question of the innocence or guilt of the defendant, those who have been summoned to his defense could advance to the issue with confidence, and this Court could decide it with no responsibility other than that of doing exact justice to the man who stands at your bar. Your judgment would affect in no way the supreme law of the land. The counsel who represent the Governor here would be clothed with no responsibility or charged with no responsibility other and different from that which rests upon every counsel in a criminal trial, but gentlemen, or members of the Court, this honorable Court, it is here, in the house of its defenders, if ever or anywhere, that the Constitution should be safe against any attack that may be directed against it from whatever source and prompted by whatever motive. It is in times, and only in times of great political excitement that our institutions are imperiled. It is no wonder that

long ago it was predicted by an acute foreign observer that if our experiment in Constitutional Government should ever fail, it would be not because of attack from without, but because of assault from within.

Now, what, if the Court please, is this power to impeach? It is the power to accuse. As one of the counsel for the Managers said "the Commons accused; the House of Lords adjudged."

But this power to accuse is a dreadful power. It is not an unlimited power. It is a limited power. It is not a power in this country at any rate to accuse anyone though it was in England at one time and, theoretically it may yet be true. It is not a power to accuse any official for anything.

Let me read to you what Story on the Constitution says, section 798 — but before I read that there comes to my mind a statement made by the counsel who opened this argument quoting a statement by a celebrated authority, that unlimited power — said the counsel — makes a beast of a man. How is it if there is more than one man? Is it any the less dangerous because more powerful?

Story says as follows:

> "The doctrine indeed would be truly alarming, that the common law did not regulate, interpret and control the powers and duties of the Court of Impeachment. What, otherwise, would become of the rules of evidence, the legal notions of crimes and the application of principles of public or municipal jurisprudence to the charges against the accused? It would be a most extraordinary anomaly that, while every citizen of every state originally composing the Union would be entitled to the common law as his birthright and at once his protector and guide, as a citizen of the Union, or an officer of the Union, he would be subjected to no law, to no principles, to no rules of evidence. It is the boast of English jurisprudence and without it the power of impeachment would be an intolerable grievance, that in trials by impeachment the law differs not in essentials from criminal prosecutions before inferior courts. The same

rules of evidence, the same legal notions of crimes and the punishments prevail."

We have heard something here of what has come to be known in history as the Sumner doctrine. Says counsel, quoting Sumner, is there any question here but "Is the man guilty?"

Yes there is another question. The question is, has he been accused of that of which the Assembly had lawful power to accuse him?

Now, Mr. Sumner may or may not have been the embodiment of New England conscience. Upon that I have no local knowledge, but Mr. Justice Curtis, Mr. Justice Benjamin Robbins Curtis was certainly entitled to speak with authority in matters of law equally with any Senator contemporary with Mr. Sumner, and it so happens, may it please the Court, that we have been enabled to procure the record in the most recent of all impeachment trials, that of Judge Archbold, and there the same contention was made, and it was necessary again to repeat to that body what Judge Curtis had said in that trial in defence of President Johnson:

> "But the argument does not rest mainly I think upon the provisions of the Constitution concerning impeachment. It is at any rate vastly strengthened by the prohibitions of the Constitution:
>
> > 'Congress shall pass no bill of attainder or ex post facto law. According to that prohibition of the Constitution, if every member of this body sitting in its legislative capacity, and every member of the other body sitting in its legislative capacity, should unite in passing a law to punish an act after the act was done, that law would be a mere nullity. Yet what is claimed by the Honorable Managers in behalf of members of that body? As a Congress you cannot create a law to punish these acts if no law existed at the time they were done, but sitting here as Judges, not only after the fact, but while the case is on trial, you may, individually, each one of you create a law by himself to govern the case.'"

You can convict upon anything that you see fit, if you come to the conclusion that a particular individual is unfit to hold public office.

Mr. Judge Curtis goes on:

> "According to this assumption the same constitution which has made it a bill of rights of the American citizen, not only as against Congress, but as against the legislature of every State in the Union, that no ex post facto law shall be passed — this same constitution has erected you into a body and empowered every one of you to say Aut inveniam aut faciam viam — if I cannot find the law I will make one. It has clothed every one of you with imperial power. It has enabled you to say sic volo sic jubeo stat pro ratione voluntis — I am a law unto myself by which I shall govern this case."

And the learned former Chief Judge feels it necessary, in order to sustain this impeachment, to maintain a principle now never found in any law book extant that the Assembly can impeach your Governor for anything that it sees fit. But, gentlemen, that is the position into which we felt they would be driven when we came into this trial.

So much has been said in commendation of my friend Roger Foster. His book has been commended to you so strongly that I will read you from page 1483 of the record of the impeachment of Mr. Archbold a quotation from Mr. Foster — no, page 89, I will read it from our brief. Mr. Foster says:

> "An officer should not be impeached for an offense before his official term."

I agree that he is an authority.

Now, what is the question? The question, reduced to its final analysis, is it not this?

> " Shall the constitution of this State, at the request of 79 members of the Assembly be amended so as to read as follows:

> "The members of the Assembly shall have the power of impeachment not only for wilful misconduct in office but also in its discretion for any misconduct before taking office which, to the majority of the members of the Assembly, shall seem to establish unfitness for public office."

What is that, may it please this Honorable Court but arbitrary power; and, if it be an attempt to exercise power not granted, what is it but an usurpation of power. If this court has any function whatever to perform it is to withstand assault upon the Constitution and prevent usurpation of power.

The newspapers have been flooded with talk that the Governor has been usurping power and ought to be impeached therefor. What shall be said of 79 members of the Assembly who have assumed a power and usurped a power they never had?

Now, may it please the Court, the people clothed the Assembly with a truly awful power when they added to the grant of the power of impeachment this provision:

> "In case of the impeachment of the Governor the power and duties of the office shall devolve upon the Lieutenant-Governor for the residue of the term or until the disability shall cease."

Did the people intend, may it please this Honorable Court, that when no charge of the violation of his oath of office had been lodged against the Governor, that a mere accusation of some misdeed in his private past life should have that effect?

The President.— Suspend now, if you please, Mr. Fox.

Mr. Fox.— I am very glad, your Honor. I was afraid I might have to go on.

The President.— File that to-morrow.

Mr. Fox.— Yes. I will.

The President.— Adjourn the Court, Crier.

The Crier.— Hear ye, hear ye, hear ye, all persons having any further business before this Court of Impeachment, held in and

for the State of New York, may depart hence, and appear here to-morrow morning at 10 o'clock, to which time this Court now stands adjourned.

All witnesses are excused until 10 o'clock to-morrow morning.

Thereupon at 5 P. M. the Court declared a recess until 10 A. M. Wednesday, September 24, 1913.

SENATE CHAMBER,

ALBANY, N. Y., *September* 24, 1913.

Pursuant to adjournment the Court convened at 10 o'clock a. m.

PRESENT:

Hon. EDGAR M. CULLEN, Presiding Judge,
and
THE JUDGES OF THE COURT OF APPEALS,
and
THE SENATORS OF THE STATE OF NEW YORK.

APPEARANCES:

THE MANAGERS:

Same as heretofore.

Counsel for the Managers:

Same as heretofore with Mr. Harland B. Tibbetts added.

Counsel for the Respondent:

Same as heretofore.

The President.— Call the roll, Mr. Clerk.

The Clerk thereupon called the roll and a quorum was found to be present with the following absentees:

Senator Brown.
Senator Coats.
Senator Frawley.
Judge Gray.
Senator Healy.
Senator Wilson.

The President.— A quorum is present. Crier, open Court.

The Crier.— Hear ye, hear ye, hear ye, all persons having any business before this High Court of Impeachment in and for the State of New York may now draw near, give their attendance and they will be heard.

The President.— Now, Mr. Fox, please.

Mr. Fox.— May it please your Honor: May I inquire of the Court whether there be any Senators who have not received copies or copy of a short brief on the front page of which is printed my name? My brief did not get into press and it was so late that it was only after you had begun to move out that they were distributed. If there be any Senator who has not a copy, please say so.

Senator Argetsinger.— I have not.

Senator Simpson.— I would like a copy, Mr. Fox.

Mr. Brackett.— If the Court please, may I make the same inquiry in reference to the brief submitted by me; there was a shortness of copies of the brief. If anyone fails to have one, if he will indicate it we will have one passed around to you before we begin.

The President.— I think hereafter it may be said that any briefs or other memoranda that are handed up by either counsel, the pages will distribute copies thereof and leave them at the desks of seats of the absent members the same as those who are present, so, on their return to Court, they can get them. Now, Mr. Fox, if you please.

Mr. Fox.— May it please the Court, we owe an expression of obligation — and when I say we, I mean, if the Court will allow me to bracket myself with them for the time being, I mean the Court and the counsel for the respondent, owe a debt of gratitude to the former chief judge of the Court of Appeals for the elucidation of the position taken by the Managers and which you heard from his lips as the Court was about to adjourn; and if I may be permitted to do so, with no desire for fulsome flattery, I know it is a most fortunate thing in a great cause tried before a great Court, that the Managers should be represented, not merely by successful advocates who might, in the stress of forensic excitement, be led to argue for positions which, perhaps, in the cooler atmosphere of the council chamber they would not suggest; and when the learned counsel, formerly an honored member of this venerable Court, had

finished his argument, it seemed to me that perhaps some time might be required of me in reply to point out the logical conclusion that flowed from his argument. And therefore I say it is that when the case was finally closed and the learned former chief judge came to say the last word upon the contention, he elucidated it in the following language which I had to repeat from memory yesterday afternoon, but which I now quote from the printed page, to wit, page 383, the printed record. After speaking of the earlier constitutions of our State, "then" said the learned former chief judge, "came the year 1846, when the Constitution was again amended. This time all the limitations as to cause upon that provision were stricken out. There were limitations before, less in 1821 than in 1777, but all limitations of every kind were swept out of existence by the amendment of the Constitution in the year 1846, and when the constitutional convention was held in 1904, it was continued as it had been before. Then, isn't it necessarily true that from 1846 down to this very date, the Assembly of this State has been at liberty by the express command of the Constitution to impeach for whatever cause it sees fit?"

May it please the Court, that is the proposition to which the case is finally reduced. Now, I intend, with your approval, to follow generally this line of presentation to-day, as is my duty charged with the responsible function of making the argument in reply, I must, so far as with my limited ability I may be able so to do, at least, point out some of the weaknesses, if I cannot absolutely dispose of the arguments that have been addressed to you on behalf of the Managers. After that, I shall pray your attention quite briefly to what are the questions which are involved here, and I shall have something to say, not by way of threat, for that would indeed be as idle as it would be unbecoming, but something in the nature of a very brief appeal to some members of this Court whose right to sit is unchallenged now, but whose attitude toward the case is such that I conceive it not only improper but my solemn duty so to do. After that I shall, if it meets with your approval, address your attention quite briefly, I hope also, to what is involved in this novel doctrine never heard before in any court of justice in this State.

Never broached in any Constitutional Convention so far, at least as the learning and industry — and it is difficult to say which excels the other — on the part of the Managers has been able to disclose. Never submitted to any people, any English speaking people, having the right to make their written constitutions. Never intimated in any political platform of any party. At any rate, never, if ever broached, if ever submitted, if ever argued, never having met with the approval of any legislative or judicial body within the United States.

After we shall have done that I shall then ask this Honorable Court to follow again this same lead of my distinguished friend whom I am now following and again — and apply to this question the same great fundamental principle which he applied so successfully, and which received the sanction of the Honorable Court to the first question submitted to this Court, what we lawyers call contemporaneo expositio. The legislative and judicial declarations from time to time giving, with the approval of the constitution making powers, should in face of them leave the language of the Constitution as equally unchanged in regard to impeachments as they did in regard to challenge — the right to challenge any member of this Honorable Court.

Now, before I finish with what I have to say in regard to the closing argument in behalf of the Managers, let me read again or further, not for the purpose of — although I shall have to do so, of making a correction of matter of fact which is a probability is such as may happen to any of us to make, but to carry it to its proper conclusion, here are the remarks of the learned counsel:

> " In 1846," reading from pages 383 and 384, " there was a feeling abroad in this State that there should be an easier method of getting rid of some of the officials in this State and so they provided in the very first section — I won't stop to read it — they provided in the very first section of this Article VI as a concurrent remedy, the power upon the two Houses of the legislature by a two-thirds vote to remove from office a Judge of the Court of Appeals or a Justice of the Supreme Court, to remove from office for cause, the reason to be stated, but the power of removal was given by that two-thirds vote."

Now I venture to express, to state that it will appear to you very soon upon undoubted authority that the power of removal thus granted was considered to be and has been held to be a broader power than the power of impeachment. The consequences are less severe. There is the removal but there is no debarring from the right to hold public office. The Judges of this Court take an oath as Judges of the Court. That does not happen when there is a concurrent resolution or an investigation under this power, and it has always been recognized that one of the great distinctions has been that in regard to impeachment the Assembly has no power to accuse an official of this State by way of impeachment for acts done before taking office.

Now, may it please the Court, you will remember that when the first of the arguments was being made for the Managers on the question of the right of the Assembly to convene itself and to impeach, the learned former senator said in this very room, it so happened that the Clerk, I think it was, of the Senate, had resigned and it was in the matter, so we were told, of the investigation into the conduct of Warren B. Hooker, then, and I believe still, a Justice of our Supreme Court.

My brief did not go to print until yesterday morning. That reference was useful, for I am enabled to lay before this Court an exact copy of the recommendation of the Judiciary Committee of the Assembly made on May 1, 1905, in the very matter to which your attention was called by the learned counsel who was then arguing for the Managers.

Now, I quite agree, and those of you, I think, before whom I have had the honor of a hearing, know that I quite agree, that cases are not to be advanced, least of all in a great cause, by personality; and yet we may well follow in the lead of the counsel to the Managers in claiming for judicial decisions or other interpretations, such weight as they may justly receive from the dignified and learned decisions of those who made the utterances, legislative or judicial.

On page 10 of my — if I may call it — my little brief, it is the one which is easily detected by reason of its insignificance in that regard at any rate, on page 10 —

After setting out the facts found, the report notes its "Conclusions" to the effect that said acts of Judge Hooker "were immoral and show a personal unfitness in him to occupy the position of Justice of the Supreme Court."

Paragraph "VI. That we are of the opinion that the said acts of the said Warren B. Hooker hereinbefore set forth in the several findings of fact, do not constitute cause for impeachment, under the provisions of section 13, Article VI, of the Constitution of this State, and section 12 of the Code of Criminal Procedure" — and note, gentlemen, if you please — I beg your Honors' pardon, and note, if the Court please, the reference to section 12 of the Code of Criminal Procedure —"for the reason that such acts were not committed in the course of the discharge of his official duty, and do not constitute wilful and corrupt misconduct in office."

But that they do constitute cause for removal.

Let us pursue the inquiry a little further and see what was said in the report of the judiciary committee which was adopted, I am informed, by the Legislature, the Assembly —

Mr. Marshall.— The Senate.

Mr. Fox.— Oh, yes.

Annexed to the report of the judiciary committee of the Senate, I thought the Senate came in there. I was not quite sure — which recommended the investigation of charges, and which was adopted and concurred in by the committee, is the opinion of the chairman of the committee, and I maintain, may it please the Court, with great confidence, that seldom have we had in the course of our legislative history one whose experience has been wider, whose fidelity to his legislative duties has been higher, or who is better qualified to speak in interpretation of the fundamental law of our land.

What is the opinion? "The language of the section as it came into our Constitution in 1821, was this, it being section 13 of Article I"— that is the first correction which the Court will please note as not made by myself, but made by the Committee and its chairman, in the opinion from which I am reading —

That this change did not come in, as you were informed — undoubtedly by oversight — in 1846, but had come in in 1821, and please accept my statement that I consider the correction as being made by the gentleman whose opinion I am reading, and not by myself.

"All officials holding their offices during good behavior may be removed by joint resolution of the two houses of the Legislature, if two-thirds of all the members elected to the Assembly, and a majority of all the members elected to the Senate, concur therein.

"By section III of Article V of that Constitution, Justices of the Supreme Court held office during good behavior until 60 years of age. There was already in the Constitution when this was added, a provision for impeachment, but to render a judge liable to impeachment (section XXXIII, Constitution of 1777), it was necessary to prove that he had been guilty of misconduct in his official capacity.

"It is manifest, therefore, that in adopting this additional provision in the Constitution of 1821, it was intended to provide for some other case than those covered by the already existing provisions for impeachment.

"The mere fact that another way was provided is prima facie evidence that it was intended to lay a broader foundation for removal, for, if this is not so, why was this additional method provided?

"If, in the performance of his judicial duties, a judge have outraged the laws of the State, whether statutory, or the principles of the common law, he could be already impeached, and when, going further, another remedy was provided, it must be because the people intended by this provision to keep in themselves the power of removal, even if official misconduct was not shown.

"The very difference," so continues the opinion, "in procedure and in result between a trial for impeachment and a removal by resolution indicates that it was intended that removal by resolution could be had for less cause than one where impeachment could lie.

"In an impeachment proceeding, the judges of the Court of Appeals, presumably the most learned and conservative members of the legal profession within the State, form a portion of the Court. The members of the Court, including Senators, take a special oath as judges in the Court of Impeachment.

"The judgment may extend to disqualification to hold any office in the State. It is a Court of Impeachment and all its members are for the time judges of that Court.

"No such solemnity surrounds removal by resolution. There is no additional oath, no court, no judgment of disqualification. It is a proceeding of the Legislature as such, while impeachment is a proceeding in the most august and solemn court known to the State."

So I think, may it please the Court, that we can write quod erat demonstratum against the proposition with which I started out before I read this report, so far as it is entitled to consideration there is a corollary from this report also of indubitable accuracy; if it be a corollary of course it is of indubitable accuracy, and that is this which I ask you all to bear steadily in mind, when we shall come to lay before you judicial decisions in cases of removal, and that proposition is, which I have just read to you, that the removal could be granted for less cause than was required to be shown in impeachment, the judgment in which might debar, and here again I ask you to remember this, not only the respondent very often but the people from having the benefit of his public service forever, and that beyond the reach of appeal. You will also find if you will turn to the memorandum prepared by my friend, Mr. Elihu Root, Jr., at my request, and of which I think it not unseemly to say I think you will receive, as certainly we have, very great assistance; there is cited at page 16, I think, the case of Conant v. Grogan.

There was a decision by a general term, the weight of whose judgment is certainly not weakened by the fact that it received the approval of one whom thereafter the people elected to the high position of chief judge of our highest Court, and it is with great confidence, therefore, that I read you very briefly what I am about

to read as a preliminary to their decisions on the same subject. And that case said:

> "The court should never remove a public officer for acts done prior to his present term of office. To do otherwise would be to deprive the people of their right to elect their officers."

And there are others. I will not take the time, and I am going to read as briefly as I can.

Now, may it please the Court, with those two utterances, each in accord with the law made, the latter in 1887, and the former in 1905, it is certainly no breach of decorum to say tempore mutantae et eras mutanas in illis.

Now, gentlemen, may it please the Court, let me call your attention to that line of argument which I said I thought it incumbent upon me to take up. That is all that it seems necessary to say, and I don't say that in any spirit of boasting, all I say is that the limits of time make it impossible for me to say more in regard to the arguments advanced by the learned counsel who last preceded me. But I desire to call your attention to page 39 of the brief submitted, or argued, or read to you by the learned former Senator. I haven't got it here.

The President.— To whom do you refer?

Mr. Fox.— Mr. Brackett read the brief. I don't know that it is his brief, that is the reason I corrected myself. I say, read by him and signed by all the counsel for the Managers.

Now, there is almost always in an argument that comes to an erroneous conclusion, a fallacy, and I think it lies in the statement that we find here. You notice I say I think. It always is difficult, of course, for an advocate to be sure that he does justice to arguments on the other side, but I have no intention of understating it.

Beginning at the bottom of page 38, "By this corrupt practices legislation," reads the brief, "the position of a candidate is legally indissolubly linked with that official. It is as much required that he shall make the statement of the amounts received by him and the expenditures, as it is required that he shall take the official oath

as governor when inaugurated. The one cannot be separated from the other. And one is as positive a direction as the other."

And in some way in the brief it is said here — Judge Herrick called my attention to it — that it is essential for him to make the affidavit in order to enter upon the office. Now, there was an act which passed which disqualified a man from office in case of a false statement in such an affidavit. That was held to be contrary to the expressed policy of the State in the Constitution, and of course it is not true. When I say it is not true, all understand that I am speaking legally only, with no desire of saying that anybody stated anything that was not true as a matter of fact. The affidavit is not made by a successful candidate, or by him as a successful candidate. In the recent election there were three candidates for the position of Governor. All presumably filed affidavits. Suppose they were all false. We could not impeach the two defeated candidates, for they did not take office. And you will see in another part of my argument, which I shall come to very briefly, that if it is now held that you can gain a forfeiture or penalty upon the successful candidate — you are imposing a penalty or forfeiture not authorized by law, and you are punishing one of the three in a way that they could not be punished, although the case were exactly the same.

Now, I am going to ask your attention very briefly to what is in England. I had said — and you will pardon me for repeating it, when I was closing yesterday afternoon — that the Assembly was practically asking you to amend the Constitution of this State. Now, what is the situation to-day? What is our law? Can it at all be said, very briefly, all citizens or every private citizen is liable to indictment, and on conviction to punishment, and surviving punishment is the right to ask, at any rate, for executive clemency? Notwithstanding, and if he be a public officer, he is liable to impeachment for wilful misconduct in office if convicted. He is debarred from ever holding any office again, and notwithstanding conviction in impeachment proceedings, he remains liable to indictment and conviction by a jury. Thus, on the one hand is it not true that the people preserve the right to punish any offender notwithstanding his election to office, and on the other hand I beg to inquire why should election to office itself

operate to impose upon the man who takes the oath of office a penalty which the law did not affix when the act alleged against him, and committed in private life, was done? Now, either all private citizens are liable to impeachment, or none are liable to impeachment. Originally, in England, and it might as well be true theoretically, there a private citizen was liable to impeachment. Here, however, that has not been the law. My attention is called to the fact that in the book of Mr. Foster on the Constitution (Vol. 1, p. 588), which received justly such unstinted praise from those who recited it first in this argument, it is said:

> "An examination of the English precedents will show that although private citizens, as well as public officers have been impeached, no article has been presented or sustained which did not charge either misconduct in office or some offense which was injurious to the welfare of the state at large."

And forty-eight cases are cited. Note, more than those, there are appended to the learned brief filed here by the Managers, I should think more than forty-eight cases, and not one of them proceeded upon an allegation and conviction of an offense done by the public officer before he took public office.

Mr. Marshall.— Those were all cases before Congress or before —

Mr. Fox.— Those were all cases before Congress or in some State of the Union. I beg your indulgence to read to you. I am not in the habit, gentlemen, when I am arguing before that branch of this court which sits immediately in front of reading opinions, but we are progressing with such celerity in the matter of rendering decisions, that perhaps it is incumbent upon me to impress upon your mind, as I go along, what there is in the way of decision, in order that you may have it at hand if you should be called upon to render a judgment more speedily than is customary in the ordinary tribunals of justice.

Story says:

> "In such a government, that is a republican government, all the citizens are equal and ought to have the same security of a trial by jury for all crimes and offenses laid to their

> charge, when not holding any official character. To subject them to impeachment would not only be extremely oppressive and expensive, but would injure their lives and liberties by exposing them against their right to prosecution for their conduct in exercising their political rights and privileges."

It is a protection against the resentments and violence of rulers and factions, which in criminal prosecutions makes it inestimable. It is there and there only that a citizen in sympathy with the integrity of a fellow citizen, impanelled to try the case, may indulge a well founded confidence and sustain and cheer him. If he chose to accept office he would voluntarily incur all the additional responsibility growing out of it.

Now, in the trial of Judge Chase, which took place in 1804 — I think the earliest of the impeachment trials in this country, Luther Martin of counsel who had himself been a member of the Constitutional Convention said:

> "Is the House of Representatives to constitute a grand jury to receive information of a criminal nature against all the citizens and thereby deprive them of a trial by jury? Public officers when they accept their offices accept them on these terms, so far as relates to tenure of office and relinquishing that privilege, they therefore cannot complain."

May it please the Court, a defendant has a voice in the selection of the jury that is to try him. A unanimous judgment is required to establish his guilt and from the judgment of conviction he has a right to appeal to executive clemency, and if executive clemency be granted, he is restored to all his political and civil rights without abridgement.

I ask you this question, preceded by a brief statement of facts:

On the 31st day of December, 1912, William Sulzer was in possession of these inestimable rights. If he has lost them or any one of them, when and how did it happen?

It must have happened on January 1, 1913. It must have happened solely because on that date he took the oath of office and entered upon the discharge of the duties thereof. No other acts subsequent to the commission of the alleged — the doing of the

alleged acts prior to taking office are set forth in either one of these three articles. How comes it, may it please the Court, that men are to be deprived of their constitutional rights in the absence of any allegation that by the doing of any act subsequent to that on the doing of which his constitutional rights accrued, except the lawful one?

Nay, more. Assuming that these acts constitute perjury, the law affixed to the commission of that act certain pains and penalties when it was done and no other.

How comes it that the Assembly of this State has power through an accusation of this kind to bring before this honorable Court having the right, as it has, to subject this defendant to another penalty and forfeiture to which he was not subject when the alleged act was done?

There were three candidates for office. Suppose, as I suggested a moment ago, that each one of these gentlemen, each one will pardon me for making the assumption, made a false affidavit in regard to his expenditures or receipts, whichever it may be. No one of them does any act that meets with the condemnation of any law of this State, but one of the three gets more votes than the other, so you impose upon him the disqualification for that which one of our courts has described as the highest privilege of a citizen in a republic, to hold office under the favorable suffrages of his fellow citizens. Nay, more. You go further, may it please this Honorable Court — or this Assembly argues you could go further — and deprive the people of the right forever, though they might all be knocking at your doors and demanding it, of the right to continue to have or to at some future time to have by recalling again to office the man who got more votes than either of the other two, but whose acts differed in no way whatever from either one of the other two.

Is any authority suggested? Is any public necessity suggested? It has been argued here that the very close connection between this affidavit and the taking of office has something to do with the fundamental principles involved here. Well, of course it has not. The two learned gentlemen who followed the first speaker were quite right. The legal conclusion, as I said in starting, the logical conclusion is that any act or none prior to taking office is

the thing to which we must look. Now, in this case of People ex rel. Bush v. Thornton, it was decided in November, 1881, the opinion by the very learned Justice Backus, the facts are stated as follows. The relator and the defendant were rival candidates for the office of county judge of Sullivan county at the General Election in November, 1878. They were the only candidates in nomination and voted for at that election save as there were a few votes for that office returned, scattering, and not necessary to be here noticed. The successful candidate published a notice or promise: I hereby repeat that if elected to the office of county judge I will pledge myself to take only $1,200 for my services, but I will pay out of my own pocket the coal necessary to heat my law office, but I will pay for all stationery and letter heads and will see that those persons needing blanks shall pay for them themselves. Now, the learned Court held, and of course it was plain as it could be, that it was contrary to law; and it were asked to remove from office the person who had been guilty of that offense. The learned Court said:

> "The offer of a bribe to an elector is unquestionably a grave offense, and is punishable as such, but it is punishable only in the manner and to the extent prescribed by the constitution and laws. Section 2 of Article 2 of our State Constitution excludes from the right of suffrage every person who shall even accept or offer a bribe for the giving or withholding of a vote at any election. And by statute bribery of an elector as well as the offer to him of a bribe, having in view the influencing of his vote, is made a misdemeanor punishable by fine and imprisonment. Such are the penalties prescribed by the Constitution and laws of our State against those offenders. But they are not declared to be also ineligible to office, or to be disqualified from holding office. Now, it is a canon of construction applicable alike to constitutions and laws relating to criminal or quasi criminal matters, that when either defines an offense and imposes a penalty therefor, the specification of such penalty is an implied prohibition against all additional punishments and forfeitures. In The State v. Pritchard (36 N. J. 101, 105), it was insisted that inasmuch as the law prohibited a

convict from being a witness in a judicial proceeding, and in consequence thereof the Constitution deprived him of the right of suffrage, as a necessary result there was a deprivation also of the prerogative to hold office. Beasley, Ch., J., answered that this was a manifest non sequitur. The learned judge added 'Because as a punishment the law has denounced the loss of two of the rights of citizenship it does not follow that a third right is to be withheld from the delinquent.' And, further, he says: 'Indeed the reverse result is the reasonable deduction, because it is clear on common principles that no penalty for crimes but that which is expressly prescribed can be executed. The fact that several penal consequences are annexed by statute to the commission of a breach of the law cannot warrant the aggravation by the judicial hand of the punishment prescribed'".

"It was further held, at Special Term, that the defendant was not eligible to the office to which he was elected by the electors of the county, because he could not truthfully take the oath of office; that because he could not truthfully take the oath of office he was in no better position to retain the office and discharge its duties than if he had neglected to take the oath. This ruling we deem to be unsound. Where, in the Constitution or the laws of this State, is it declared that false swearing in taking the oath of office disqualifies a person from holding the office to which he was elected? We are not cited to any such constitutional or statutory provision, nor are we aware of any. Such false swearing may be perjury, but the crime of perjury has certain pains and penalties attached to it by law. Can the Court add to them any others not declared either by the Constitution or laws? This question is answered by our conclusion on the subject last above considered. As has been already stated, it does not lie with the Court to enhance the pains, penalties and forfeitures provided by law for the punishment of crime; nor can it add any disability to these pains and penalties not expressly declared by the Constitution or laws.

"Disability to hold office would follow indictment and conviction of perjury, as the statute declares that an office

shall become vacant in case the incumbent shall be convicted of an infamous crime.

"The law requires that a person elected to office shall take and subscribe the requisite oath of office, and that if he shall omit so to do within the prescribed period the office shall become vacant. But it does not further declare that the office shall also be deemed vacant if the officers shall not swear to the truth in taking such oath, or that he shall in that case be disqualified from holding the office. The law denounces against the offender certain pains, penalties, forfeitures and disabilities, and these, and none other, the court may inflict and impose."

I will not read more. But there are other cases cited here in which the question of bribes is taken up. The oldest one is Commonwealth v. Barry in the Third Kentucky Reports. This was a proceeding to remove Barry, a clerk of the Court, under a certain article of the Constitution of Kentucky which provides for clerks and that they shall be removable. The Court said "we could never think of putting an officer to the trouble and expense of defending himself upon a charge while we are satisfied by the proof that it would not be a sufficient case to remove him from office. We are of opinion that proceedings under this section of the Constitution must be confined to misconduct in office," and you will see, may it please the Court, running all through the decision, that in these removal cases they assimilate the impeachment proceedings to a certain extent. The Constitution provides that laws shall be made to exclude from office and from suffrage those who shall thereafter be convicted of bribery, perjury, forgery and other high crimes and misdemeanors. As far as the Legislature have acted or may act under this latter section of the Constitution it would require a conviction under a regular prosecution for the crime charged and the production of the record of conviction before this Court would take up the subject. To determine that this Court could for every misconduct in private life committed by a clerk remove him from office would be putting every clerk in the arbitrary power of the Court and might be exercised to the worst of purposes, just as it would put every public officer in the arbitrary power of the Assembly.

I remember now that Mr. Tilden was quoted. Did anyone ever see anything from the pen of Mr. Tilden that the past life of a successful candidate for the presidency would be ground for impeachment? Let us then as a result of the most fanciful result of imagination apply this doctrine, let us suppose if such a thing could be possible — of course it could not be — that a President of the United States who was carrying out in a forceful and aggressive manner very distinct policies entrusted to his charge and in which a majority of his fellow citizens believe, should turn out before taking office or perhaps after taking office to have developed a habit of making statements in regard to facts which were not entirely in accord with the truth; had perhaps developed what might be called an habitual disregard of the truth, and had also developed a habit of charging people who differed with him with not telling the truth, would anybody suppose you could impeach him for anything of that kind, and yet here my learned friend says a disregard of the truth is one of any causes for which a public officer may be impeached. But there are other cases in regard to this subject of bribery. There is one here in Pennsylvania where precisely the same doctrine is held, and others, Commonwealth v. Shafer in the 3d of Watts & Sargeant, 338. So that we must not forget in times of political excitement when we are driven some of us by a desire to put out of office some person who has become unpopular that we may be depriving him of the rights guaranteed to him by the Constitution. Let me ask you this question, may it please the Court; this is September, 1913. This respondent has not been in office a year. Suppose these articles had been dismissed because of lack of jurisdiction, or suppose by some reason or some defect they had never come before you and this respondent had given this State for the following twelve months an administration excelling that which had ever been given by any Governor. Is it possible that in the face of good conduct in office he could be called here to answer the charges that are made to-day, but if they are made to-day, why would they not be good at the last end of his term? Would a plea of faithful and effective service be demurrable? If so, what did Story mean when he said that impeachments were of vast importance both as a check to crime and an incentive of virtue, meaning of course, public virtue. If there be no official mis-

conduct alleged, if there be no suggestion of a violation of the oath of office, if there be no instance of what Madison preferred to call mal-administration, where did the Assembly of this State gain its jurisdiction to charge the Governor of the State in these articles and bring him before this honorable Court asking for his removal and debarment forever from public service? Why, so long ago as the 15th year of Edward III it was resolved no peer of the land, crown official or other man in office can be brought before the Court, and cannot be rendered punishable by a judge otherwise than through the award of the peers. Let me read you from the record in the Archbald case, page 1474, a very few words, and I read you from the 78th number of the Federalist, the bottom of page 1474 of that record:

> "The standard of good behavior, says Hamilton, is one of the most valuable of the modern improvements in the practice of governments. In a monarchy it is an excellent barrier to the despotism of princes. In a republic it is no less an excellent barrier to the encouragement of oppressions of the representative body, and it is the best expedient which can be devised in any government to secure the steady, upright and impartial administration of the laws."

If, may it please the Court, we have no lamp by which our feet are guided but the lamp of experience, and if we can judge of the future only by what we know of the past, experience in this State has shown to our people that political leaders of political organizations once gained power not only to loot the treasury of our metropolis, but to invade our courts of justice and write their decrees.

May not the time yet come when some political leader may acquire such ascendency, may be filled with such unmitigated rancor that he will be able not only to control a majority of the Assembly, but in some future Senate, may find complaisant Senators in numbers sufficient to write his decrees if we depart one jot from the fundamental doctrine that where there is no official misconduct alleged, the Assembly has no jurisdiction.

Let me read you from page 489 of the Archbald record. I read from Tucker on the Constitution, quoted, if the Court please,

from the brief of the Managers in that case. Lest I forget it, let me say in passing that in the Archbald case the question was presented whether a Circuit Judge of the United States could be impeached because of acts done as a District Judge. No one suggested for a moment that he could be impeached for acts done before he became Judge at all, and what wrote the Managers even of that modified claim? A far less dangerous claim than that which is the logical result of the position here that the Assembly in its discretion may impeach for any act committed at any time, they wrote:

> "This proceeding seems to be unique in the annals of impeachment under our constitution."

And they put in their brief the word "mal-administration" which Mr. Mason originally proposed and which he displaced because of its vagueness for the words "——

I think Mason is a misprint for Madison, but that is a small matter — "other high crimes and misdemeanors was intended to embrace all official delinquency or mal-administration by an officer of the government where it was criminal, that is, where the act was done with wilful purpose to violate a public duty."

And, in another place: "It must be criminal misbehavior and the purposed defiance of official duty."

Now, of course, there is no question here but what when you get a case of defiance of public duty it is impeachable, even though it may not amount to a violation of the Penal Code. Every act which has ever been made the basis of any impeachment was committed while the person impeached was in the possession of some office, either the former term, or some other office which was held to be immediately connected; and yet, may it please this Court, if it were a novel proposition, I could show to you here, I have got the cases here, that the weight of authority is fairly against, and if not against it raises a great doubt on the proposition whether an officer in one term may legitimately be impeached for offenses committed in a preceding term.

Let me go on. I now come to the proposition which can be fairly stated, I think, in this language:

"It was mal-administration, or the neglect of official duty amounting to wilful misconduct in office over which the jurisdic-

tion was understood to extend in the impeachment of Blount," quoted in the impeachment of Archbald at page 87. The Managers said that it was a known thing, having a previous definite existence.

Now, that being so, how does it happen, how does it happen that they who come here asking this Court to inflict this awful punishment upon this respondent, and to declare the right to deprive the State of the service of anybody against whom such judgment may be rendered, is not furnished with any — not only with any authority, but with no statement from any text book that the power exists, and I repeat, we are not here in the interest of William Sulzer on this question. We have not got down to the personal question yet, may it please this Court. We are here resisting what Hamilton calls " The oppression of the representative body." We are here denouncing the usurpation of power exercised by seventy-nine members of the Assembly, and if you don't stop it here, who can tell what may happen next, or what may be the next claim of power in some future time of political excitement, when a hostile majority may be in command of the lower house, and possibly in command of this Court.

I beg to call the attention of the Court to the very great decision of Lord Camden in the very celebrated case of Entick v. Carrington. And let me say in passing, may it please your honors, that I heard only yesterday on this great court room the use of the word " technicality;" disavowed by my honorable and learned friend, but inserted into the case by my other equally learned and honorable friend. The word " technicality." It is new doctrine in the United States of America that resistance to usurpation is a technicality. If resistance to usurpation be a technicality, then the whole progress of English speaking people from arbitrary government to a government by constitutional limitations, has been one unbroken series of triumphant technicalities.

Now, let us come back to Lord Camden. In that case, may it please your Honors, the question was the right of one of the secretaries of state to issue warrants for the seizure of the private papers of citizens, private citizens, in order to suppress seditious libels. It was argued that the power was necessary to the State. The kind of argument that you always find back of the attempt to

exercise tyrannical power. You were told here to-day of the awful consequences that may flow from the social contact that some persons may have to endure if they come next to the respondent here, who, it is alleged, has committed this offense. Well, let me say, before I come to what I was about to read, that there are about twenty-four Constitutions in these States, and that we have in it the exact words misconduct — wilful misconduct in office. And they seem to admit that if those words were in they would not go behind. And yet we find none of the shocking consequences which lie right on the surface.

Now, I say, it is always the argument made for the exercise of tyrannical power, that it is necessary because of some political exigency. What is the political exigency in the State of New York, if there be any? And we all know. What is the need of these three articles? They have got five other articles here, may it please the Court, against which no complaint is made, for alleged misconduct in office that can be made and disposed of without much trouble. Why are you asked to give this Assembly this power, if there be no motive behind this but that which ought to lie behind ordinary impeachment.

Now, what is said here by Lord Camden? It was admitted, may it please the Court, that the power had been exercised without complaint. Said Lord Camden, in words which ought to be written over every door of every Court, and I would like to inscribe them on the heart of every Senator in this court room:

"One should naturally expect that the law to warrant it should be clear in proportion as the power is exorbitant"— that is, the power should be clear — "in proportion as the power is exorbitant. If it is the law, it will be found in our books. If it is not to be found there, it is not law." Now, we are not talking here of police powers or other matters where there is an expansive and expanding jurisdiction. We are talking of constitutional questions. We are talking of what is it that was meant. What was this ancient and definite thing which the men who founded this Constitution had in mind when they wrote it? We are talking of the same kind of thing that was claimed to exist, and on the claim for which Lord Camden put his stamp of disapproval. Will you do the like, or will you decide the contrary? There is no

escape. You must either say Lord Camden was wrong, or you must say he was right. Now, it is only by following the method of Lord Camden that we can dispose or arrive at a just conclusion and accurate conclusion. What after all are we talking about in this matter? We are talking about what in the end is a question of fact. What as a matter of fact has this power been understood to be? When you find out what it has been understood to be, then you know what it is. And by the way, it occurs to me in passing on this subject of usurpation of power by this Assembly, what shall be said of an assembly that does this thing? In 1881 they united with the Senate in passing the Act of Criminal Procedure. I think it was 1881.

Mr. Marshall.— 1881.

Mr. Fox.—And in that act they laid down the law. They say that they cannot amend the Constitution. I quite agree. But their interpretation of the Constitution is useful. They united in an act with the Senate, and said that impeachment shall be only for misconduct in office. This Assembly is not willing to be bound even by the law it itself has written on our statute books, and in violation, in defiance of their public duty, with that impatience of constitutional restraint which marks so many nowadays, this Assembly has broken loose, attempted to break loose at any rate, from the limitations which, as a part of the Legislature, it set upon itself.

Now, may it please the Court, we cannot shut our eyes to the fact that in this country to-day there is a large body of our fellow citizens led by popular and powerful leaders whose very political creed involves an impatience of constitutional restraint and who believe in rushing at once to some desired end in contempt of all obstacles, and in defiance of all legal obstacles. If the Managers be right — for this act of the Assembly is but an unconscious expression of this so-called spirit of the times — if these Managers who are acting for this Assembly, be right, then will your Honors write at once the decree without regard to law, which you may think the popular demand may require.

Now, Judge Van Cott was quoted here yesterday, and again I have to thank my learned friends upon the other side, for we have

gone to the record of the Barnard case, and on page 164 we find the argument of Mr. Van Cott for the Managers as follows:

> "I agree with my learned friend that the question is before you as a court, that it is a question of law, not of discretion."

No, may it please your Honors, this is not a power to impeach at will; this is not a discretion to charge at will. It is a matter of law, and I was amazed to hear the remark made which practically intimated what is the use of bothering about this thing? Any official who is once impeached is deprived of public usefulness? Now, may it please your Honors — I beg to say for a moment in closing — nothing but my own sense of this attempt has led me here but the conviction that this action of the Assembly is nothing more or less than an attempt to induce the State of New York to trample under foot its own fundamental law, in order that a present advantage may be gained in the restrictions and repression of an individual unpopular with certain factions in the State. If that be so, then indeed all the time that we can give to it is not wasted, and that is my apology.

Now, in closing, I have again to express the sense of deep obligation under which I find myself, and I know under which your Honors find yourselves, for the contribution which has been made to this discussion by my friend the Honorable Chief Judge of our highest court. Our contention is, may it please the Court, and it must be, of course, acceptable to you all, that where you had a contemporaneous exposition by judicial and legislative acts followed by a constitutional convention, leaving the fundamental law unchanged, that is indubitable to you all that that judicial and legislative interpretation was in accordance with the true meaning of the Constitution. Even in private contracts, I need not remind your Honors, the contemporaneo expositio is of the highest value.

Said Lord Sugden:

> "Tell me what the parties have done, and I will tell you what it means."

Tell me what the Legislature, what the judiciary committee, what the courts have said, under a constitution and let that be

followed by a constitutional convention, and let the language in the new constitution be unchanged, and I will tell you what the constitution means. Was not that the argument that was proposed in opposition to the motion to disqualify certain of our Senators here? And how grave that question was. Was it in language less than this? You all understand that I am not arguing against the decision that was made; the decision was indubitably, of course, correct, and yet, in holding it it was an apparent defiance to those who did not know the law, of the great and fundamental right that no man should profit by his own vote in a court. And it was also apparently, at first sight, but of course it was not, in violation of the other great principle that no man should be passed in judgment before anyone — before any court where he had not enjoyed the cold neutrality of an impartial judge.

Why was it that this Court felt itself bound to overrule the contention of respondent's counsel, a plea of that kind? And here it is that I find myself again under obligations, as I say, to my learned friend. Here is what the argument was. In speaking of the doctrine in the Dorn and Barnard cases, it was said as follows:

> "Now, when our constitutional conventions came to consider this subject, they were aware of these precedents, but did they amend the Constitution in this respect? Not at all. In the year 1904 our Constitution was revised, but the language of the Constitution on that subject remained the same as in 1846."

For this relief I thank you. The argument carried, justly, great weight with all who heard it, and those who heard it appreciated that it was — that in some measure at any rate it controlled the judgment of this Court. Let us now apply this argument to the claim that the power of the Assembly to impeach was extended, immeasurably, by the Constitutions of 1846 and 1894. I don't know that it has been read to you before. Yes, my friend former Justice Herrick did read to you the report of the committee of the Assembly in 1853, where that precise doctrine was set forth, that an impeachment would not lie for acts done before taking office. The Constitution there — adopting the language

of my learned friend — had before it all the precedents in which it was either assumed, or held that the power to impeach was limited to wilful misconduct in office. Did they amend the Constitution? Not at all. The language of the Constitution on that subject remained the same as in 1846.

But, may it please your Honors, we do not need that. What is the power to impeach? As I stated before, it is the power to accuse for wilful misconduct in office. The men who wrote the Constitution were seeking brevity and terseness. They were seeking the elimination of tautology. When you say the power to impeach for wilful and corrupt misconduct in office you are guilty of tautology. When you say the power to impeach alone, you mean, and everybody knows that you mean, or lawyers do, at any rate, the power to accuse for wilful and corrupt misconduct in office.

Now, it has come to this, that the elimination of tautology, that a triumph of terseness, is to be held by this Court to be the equivalent of a grant of unlimited power never claimed before, never suggested in the Convention of 1846, or the Convention of 1894, never sustained by any court.

Now, one word and I am through. In regard to this doctrine of which we are speaking, that it has always had one meaning and has never been questioned, let me read to you the following sentence from the opinion of the learned Chief Judge, "The correctness of a legal principle like the excellence of the character of an individual may be as firmly established by its universal acceptance and the failure to question it as by favorable decisions when the subject is mooted."

Now, may it please your Honors, I said that I felt it my duty, and it is not a pleasant one, but he is unfit to stand before this Court in defense of a great constitutional principle who dare not say it — there are certain members of this Court whose legal right to sit I do not challenge, I cannot challenge, but I appeal to each one of those four or five members of this Court, not only when they come to pass upon the guilt or innocence of this defendant on the question ultimately to be submitted to them on the final articles which are not challenged, but on the questions of law, one of which is now before them —

Mr. Parker.— I protest, if the Court please.

The President.— I think you may proceed.

Mr. Parker.— No counsel has a right to lecture a member of the Court who has a right to sit.

The President.— He has the right, I think, if he makes an appeal in a proper and respectful manner.

Mr. Fox.— I was quite sure your Honor would check me if I didn't. Make no mistake —

The President.— Of course, it must be done in an entirely respectful manner. I have no doubt that counsel will do it in that manner.

Mr. Fox.— I thank the learned gentleman for his interruption. I have no purpose to lecture. I certainly have no purpose to threaten, but the Constitution is in your hands. You are the majority of this body and a majority vote may determine any question except the question of guilt. Some of you in the performance of your public duty, subject to no criticism in my mind, gentlemen, or in my heart, have expressed opinions on this subject; and all that I was proceeding to do when my learned friend saw fit to interrupt me, was to ask you to look into your hearts before you vote on the question whether you shall permit yourselves to approach the question of the guilt or innocence, whether you shall sustain the right of inquiry into these charges and see that in acting not only on this question of fact, you are quite sure that nothing will affect your judgment, that nothing that you may feel on the questions of fact you will allow to affect your judgment on this question of law.

I know, gentlemen, we all know, that we are all human, and I know and you know that this is the greatest cause that has ever been submitted to any Court in this State. You are the greatest Court. See to it that you don't by your vote write into the Constitution of this State something that is not there, something which, if there, will vest the representative body with a power most disastrous in its consequences to our State, of whose fair fame we are all so jealous.

Let me put one question to you. Suppose this trial were taking place next year. Suppose this respondent has been renominated. Suppose the sittings of this Court should extend beyond election day and he were re-elected. If the Assembly had the right, you could then — I don't suppose you would, but your successors might, being less jealous of the Constitution than you, might write a decree by which you would debar the millions in this State from enjoying the public service of a man who again, on my hypothesis, they might have called to office. Are there not in such a power the seeds of revolution?

MEMORANDUM OF ELIHU ROOT, JR., ON THE AUTHORITIES.

On the Motion to Dismiss Articles I, II, and VI.

This is a constitutional court, deriving all its powers by delegation from the people under article VI, section 13 of the Constitution of this State. It has been contended that this section, containing as it does no definition of impeachable offenses, must be construed so as to grant to this court, by implication, unlimited power to try public officers for acts done by them in private life, before taking office.

There may have been a time in history when such a contention would have been open to discussion and to determination on general principles as an original question. That time has long passed.

It is clear that the framers of the Federal Constitution by the "high crimes and misdemeanors" of their impeachment provision meant only acts *in office*, though this is not expressed. Alexander Hamilton, in the 65th issue of the Federalist, said of the court of impeachment: "The subjects of its jurisdiction are those offenses which proceed from the misconduct of *public men*, or, in other words, from the *abuse or violation of some public trust.*" Since that was written there has been no case known to counsel where it has been even suggested that any Federal officer could be impeached or removed for acts done while he held no office.

In 1807, in Kentucky, under a constitutional provision making clerks of court removable for "breach of good behavior," but not

specifying whether such breaches might be prior to the taking of office, it was sought to remove a clerk for *bribery in procuring his own election.* The Court of Appeals of Kentucky sustained a demurrer on the ground that "proceedings under this section of the Constitution must be confined to misconduct in office." For over a hundred years this decision has stood unquestioned as the law of that State. (*Commonwealth v. Barry,* 3 Hardin, 229, Appendix, p. 436.) And it should be remarked here that the "removal" cases have always been considered authorities in cases of impeachment and vice versa.

In 1840 the same question arose in New York in the case of *People v. Henry W. Merritt, Special Justice,* before the Court of Common Pleas of the city of New York. The following excerpt from the opinion of the court as delivered by Mr. Justice Daniel P. Ingraham is taken from the report published by Gould, Banks & Co., and found in Pamphlets, Trials, vol. 3, N. Y. C. Bar Assn. Library:

> "The first demurrer to the first, second and third charges is founded upon the fact that the charges therein made were for acts done by him before his appointment as a Special Justice. It does not appear to the court in any way when the respondent was appointed to this office, except in the fourth charge, which alleges that he was appointed before February, 1839. If he was an officer at the time of the acts charged in the previous charges, it should have been so averred. I therefore conclude that at the different periods stated therein he was not a Justice. This proceeding is, in respect to the mode of conducting it, somewhat analogous to impeachments and the rules governing those proceedings should generally be applied to the presentation of charges before the court against a Justice. It is not necessary in all things to conform to those rules, as there is a greater discretion vested in the court by the provision of the Constitution which confers the power on the court. But at the same time these rules, which have been found to be the best calculated to control the trial of impeachments, will be found the best adapted to such a proceeding as the present. .
>
> "The Constitution confers upon the Justice an office which

cannot be taken from him, except in case of removal by the county court for causes to be particularly assigned by the Judges. There may be cases where a person unworthy of the station is appointed. It may be done sometimes through ignorance, and it may also be done after full knowledge of the objections. But whether the objections are known or unknown to the appointing power, is a question with which, it appears to me, this court has nothing to do. It seemed to be conceded that, if the charges against an individual for acts before his appointment were known to the appointing power, it would not be a good ground for his removal. Any other rule would render the power of the court in this matter, in effect, nugatory. If the court were to interfere and remove from office an individual, upon a charge against him of a crime, the existence of which charge was known to the power that appointed, such removal would be of no avail, if the same authority which originally appointed him could immediately restore the individual to office. And if the appointment was made with knowledge of the charge, it is fair to presume that he would be reappointed if removed therefrom. And it would be, also, impossible to distinguish between the two cases. Whether the charge was known or not, could only be ascertained by application to the appointing power. And such a proceeding, I cannot imagine, was ever contemplated by the framers of the Constitution. No case can be found that will warrant such a course of proceeding; but, on the contrary, every case to which the court has been referred, shows that the charges made were for acts done during the period of holding the office. If causes of removal were to be deemed sufficient for acts done before appointment, where is the line to be drawn as the boundary to limit the examination. If the court can go back two years in one case, they may go back five in another, and ten in another. And if the examination is only to be limited by the peculiar circumstances of the case under the investigation, the court might be required to review the conduct of an individual at any previous time which the complainant thought fit to select. * * *

> "This court, after hearing counsel for the respondent and for the complainants in this matter upon the demurrers, filed to the charges therein, do order judgment for respondent upon all the demurrers, and that the order to show cause be dismissed."

This was a widely known case at the time. It was argued by Charles O'Conor and Francis B. Cutting on one side, and James R. Whiting on the other, before a very able court.

In 1853 the Judiciary Committee of the Assembly of New York made a formal report to the Assembly on the power of impeachment in which they say:

> "That the person impeached must have been in office at the time of the commission of the offense, is clear from the theory of our government, viz.: that all power is with the people, who, if they saw fit, might elect a man to office guilty of every moral turpitude."

In 1863 the Committee of the Assembly, examining charges of corruption against ex-Speaker Callicott, unanimously decided to receive no evidence of charges of corruption prior to his term as a member of the Legislature,— plainly because they believed they had no jurisdiction to consider acts done out of office. (P. 200, Trial of Judge Prindle.)

In 1878, in the case of *Ex rel. Bancroft v. Weigant* (14 Hun, 546, 2d Dept.), Barnard, P. J., delivering the opinion of the court, said:

> "In March, 1878, the relator was removed from this office of marshal upon charges sustained by proof that Bancroft, the relator, had before his appointment, held an office of collector of taxes of the city of Newburgh, and had failed to account for and pay over the money collected by him to the city treasurer. The sole question, therefore, presented is whether proof of this default as collector of taxes establishes 'incapacity, misbehavior or neglect of duty,' as marshal of police. It seems quite clear that it does not. The 'incapacity, misbehavior or neglect of duty,' must be established against the relator in respect to the office of marshal."

The statute under which the proceeding was brought simply provides for "removal by the Mayor for incapacity or misbehavior, or neglect of duty" without referring to the time of such occurrences. This was a square decision on the point.

In 1881 the Legislature enacted the Code of Criminal Procedure which in section 12 contained a clear legislative expression of opinion against the power to impeach for acts committed prior to induction into office.

> "§ 12. Its jurisdiction. The court for the trial of impeachments has power to try impeachments, when presented by the Assembly, of all civil officers of the State, except justices of the peace, justices of justices' courts, police justices, and their clerks, for willful and corrupt misconduct *in office.*"

In 1887, in the case of *Conant v. Grogan,* 6 N. Y. St., 322 (Supreme Ct. Gen'l Term), Learned, P. J., said:

> "The court should never remove a public officer for acts done prior to his present term of office. To do otherwise would be to deprive the people of their right to elect their officers.
>
> "When people have elected a man to office it must be assumed that they did this with knowledge of his life and character, and they disregarded or forgave his faults or misconduct, if he had been guilty of any. It is not for the court, by reason of such faults or misconduct, to practically overrule the will of the people."

The fact that Judge Alton B. Parker, subsequently Chief Judge of the Court of Appeals, concurred in this opinion enhances its weight as an authority.

In 1894 in the case of *Speed v. Common Council,* 98 Mich. 360, the Supreme Court of Michigan said by way of dictum:

> "* * * * the charges preferred, so far as they relate to the acts of Mr. Speed committed before his appointment to and induction into this office, are clearly beyond the jurisdiction of the respondents to determine. There is no provision in the Constitution nor in the laws which prevents a

person from holding office for misconduct in another office which he held prior to the one to which he was elected or appointed. We have been unable to find any authority which justifies a removal for such previous misconduct. The misconduct for which an officer may be removed must be found in his acts and conduct in the office from which his removal is sought, and must constitute a legal cause for his removal, and affect the proper administration of the office. There is no restriction upon the power of the people to elect, or the appointing power to appoint any citizen to office, notwithstanding his previous character, habits, or official misconduct."

As this stands unquestioned by any other case, it should be taken to represent the law of Michigan to-day.

It is to be noticed, moreover, that even bribery in procuring one's own election is not misconduct *in office* and is not a ground for removal. Commonwealth v. Barry (Ky.) (Above); Commonwealth v. Shaver (Pa.); Cf. People v. Thornton.

There is *no* recorded case either in our own State or in any of our sister States, nor under the United States of America, where an officer has been removed by judicial process for acts done while not in office. Every recorded attempt has failed. There has never even been an *attempt* to remove an officer for such acts by impeachment. Never before in all the passionate and dramatic struggles of our history has any man had the hardihood to advance before a high court of impeachment the proposition that one can be impeached for acts done out of office.

To be sure, it has often been attempted to impeach or remove an officer for acts done in a *prior term* of office. This was done successfully by impeachment in Judge Barnard's case (Appendix, p. 441), in Judge Hubble's case (Appendix, p. 441), and in Governor Butler's case (Appendix, p. 443). It was done by proceedings to remove in the case of Judge Prindle (Appendix, p. 452), of Judge McCunn (Appendix, p. 453), of Iowa v. Welsh (Appendix, p. 453), and of State v. Bourgeois (Appendix, p. 455). It was attempted unsuccessfully by impeachment in the case of

Judge Archbald (Appendix, p. 448), and by proceedings to remove in State v. Jersey City (Appendix, p. 437), State v. Common Council (Appendix, p. 436), and Thurston v. Clark (Appendix, p. 439). From the opinion of our own Assembly Judiciary Committee in 1853 to the opinion of the Federal Senators in the Archbald case, in 1912, there has been an ardent and unsettled dispute as to the power of impeachment for acts done by an official during a *prior term* of the same or a similar office. But in all the cases on this latter point, cases mostly of large importance, prepared with the greatest industry and ingenuity by distinguished counsel, and tried before able and eminent judges, it was never suggested that the charges could be sustained on the ground that acts *done out of office* were impeachable. Always there is the assumption in the arguments and briefs of counsel and in the opinions of the Senators and Judges that the acts charged *must* be shown to have been done during tenure of the same or a closely similar office. The basis of decision is always, as the Court says in Iowa v. Welsh (Appendix, p. 439), "Being his own successor, there is *no interregnum.*" Or in State v. Bourgeois (Appendix, p. 455): "There was by his election *no interruption in his official tenure. At no time was there an interregnum.*"

Is there not a weighty argument to be drawn from the tacit assumption of these latter cases?

In 1895 Foster in his text-book on the Constitution summarizes the contemporaneous belief of the bar when he says "An officer should not be impeached for an offence before his official term."

In 1894 the Constitutional Convention adopted and the people ratified the 13th section of the VIth article of the Constitution under which this court now acts. The words of that section were not new. They were part of the Constitution of 1846. For half a century they had stood as part of our fundamental law. The men who, in 1894, re-enacted those words must have believed that there were continuing the law as it had been before. On the Judiciary Committee of that convention were men as learned in the law as any whom this State has produced. They lavished on the brief judiciary provisions of the Constitution the most profound

study. Were they ignorant of this rule of law that an officer cannot be impeached for acts done out of office — this rule, never questioned, laid down with emphasis in every decided case, enunciated by our legislative committees, written into our statutes, promulgated by our elementary text-books? And if they knew of the rule, can we believe that they meant to change it by re-enacting the same old words?

Bowing to the great principles of construction that no law shall be deemed to impose a penalty or forfeiture except by clear expression or necessary implication, and that every law shall be read in the light of the knowledge and meaning of the men who wrote it, must we not hold that the law is now as it always has been, that no man can be impeached for acts done out of office?

APPENDIX.

I.

There has never been an attempt in this country to IMPEACH an officer for acts done by him while he held no office. There is, therefore, no authority on this point arising *in a case of impeachment.* That a public officer cannot be removed from office by judicial or quasi-judicial proceedings for acts done while not in office has been decided three times in the courts of the State of New York. People v. Henry W. Merritt (Special Justice, Court of Common Pleas, City of New York, 1840); Ex rel. Bancroft v. Weigant (14 Hun, 546); Conant v. Grogan (6 N. Y. St., 322, Supreme Court Gen'l Term).

There is a dictum to the same effect in the Matter of Guden v. Dike (37 Misc. 390). (Page 431 of the Appendix.)

There has also been a legislative interpretation of the New York law to this effect. Section 12, Code of Crim. Pro.

There is also a dictum in an opinion of the Judiciary Committee of the Assembly delivered in 1853 to the same effect, and counsel believes that there was a decision to the same effect by the special committee of the Legislature investigating charges of corruption against ex-Speaker Callicott, in 1853. (See p. 200, Trial of Horace G. Prindle.)

There is no contrary authority in the State of New York except a dictum in the opinion of the Appellate Division in the Matter of Guden (71 A. D. 422) (Appendix, p. 432).

II.

It has been decided once in the court of last resort of a sister State that a public officer cannot be removed by judicial proceedings for acts done while he held no office.

Commonwealth v. Barry, 3 Hardin, 229 (Ky.).

There are dicta to the same effect in Speed v. Common Council (98 Mich., 360); State v. Jersey City (25 N. J. Law, 536); State ex rel. Gill (9 Wis., 254); Thurston v. Clark (107 Cal., 208; Iowa v. Welsh (109 Iowa, 19).

There are several opinions of text writers to the same effect: Foster on The Constitution, Vol. 1, p. 598; 29 Cyc., 1410; Harvard Law Review, June, 1913, pp. 702-704.

[Note: It has been twice held that the law of impeachment is applicable to cases of removal on judicial proceedings. State v. Bourgeois (45 La. Ann., 1350); Matter of Merritt (Court of Common Pleas, N. Y., 1840).]

III.

That a public officer can be convicted *on impeachment* for acts *during a prior term in the same or a similar office* has been decided three times in the United States. Trial of Judge George G. Barnard (N. Y., 1872). Trial of Judge Levi Hubble (Wisconsin, 1853). Trial of David Butler, Governor of Nebraska (1871).

That he cannot be so convicted for such acts has been decided once in the United States. Trial of Robert W. Archbald (United States Senate, 1912). Compare, also, report of Assembly Judiciary Committee, 1853.

That an officer can be removed by judicial or quasi-judicial proceedings for acts done during a prior term in the same or a similar office has been decided at least five times in the United States. Matter of Judge Prindle (N. Y. Senate, 1872); Matter

of Judge McCunn (N. Y. Senate, 1872); Iowa v. Welsh (109 Iowa, 19); State v. Burgeois (45 La. Ann. 1350).

The contrary has been held in cases of removal by judicial or quasi-judicial process twice in the United States. State ex rel. Gill v. Common Council (9 Wis., 254); Thurston v. Clark (107 Calif., 285). There is also a dictum to this effect in State v. Jersey City (25 N. J. Law, 536).

1840. *People v. Henry W. Merritt, Special Justice,* before the Court of Common Pleas of the City of New York.

This was a distinguished case in which the State was represented by the District Attorney, James R. Whiting, and the defendant by Charles O'Connor and Francis B. Cutting.

The following excerpt from the opinion of the court, as delivered by Mr. Justice Daniel P. Ingraham, is taken from the report published by Gould, Banks & Co., and found in Pamphlets, Trials, vol. 3, N. Y. C. Bar Assn. Library:

> "The first demurrer to the first, second and third charges is founded upon the fact that the charges therein made were for acts done by him before his appointment as a Special Justice. It does not appear to the court in any way when the respondent was appointed to this office, except in the fourth charge, which alleges that he was appointed before February, 1839. If he was an officer at the time of the acts charged in the previous charges, it should have been so averred. I, therefore, conclude that at the different periods stated therein he was not a justice. This proceeding is, in respect to the mode of conducting it, somewhat analogous to impeachments, and the rules governing those proceedings should generally be applied to the presentation of charges before the court against a justice. It is not necessary in all things to conform to those rules, as there is a greater discretion vested in the court by the provision of the Constitution, which confers the power on the court. But at the same time these rules, which have been found to be the best calculated to control the trial of impeachments, will be found the best adapted to such a proceeding as the present.
>
> "The Constitution confers upon the Justice an office which cannot be taken from him, except in case of removal by the

county court for causes to be particularly assigned by the Judges. There may be cases where a person unworthy of the station is appointed. It may be done sometimes through ignorance, and it may also be done after full knowledge of the objections. But whether the objections are known or unknown to the appointing power, is a question with which it appears to me, this court has nothing to do. It seemed to be conceded that, if the charges against an individual for acts done before his appointment were known to the appointing power, it would not be a good ground for his removal. Any other rule would render the power of the court in this matter, in effect, nugatory. If the court were to interfere and remove from office an individual, upon a charge against him of a crime, the existence of which charge was known to the power that appointed, such removal would be of no avail, if the same authority which originally appointed him could immediately restore the individual to office. And if the appointment was made with knowledge of the charge, it is fair to presume that he would be reappointed if removed therefrom. And it would be, also, impossible to distinguish between the two cases. Whether the charge was known or not, could only be ascertained by application to the appointing power. And such a proceeding, I cannot imagine, was ever contemplated by the framers of the Constitution. No case can be found that will warrant such a course of proceeding; but, on the contrary, every case to which the court has been referred, shows that the charges made were for acts done during the period of holding the office. If causes of removal were to be deemed sufficient for acts done before appointment, where is the line to be drawn as the boundary to limit the examination? If the court can go back two years in one case, they may go back five in another and ten in another. And if the examination is only to be limited by the peculiar circumstances of the case under the investigation, the court might be required to review the conduct of an individual at any previous time which the complainant thought fit to select. There is, also, another reason arising out of the decision of this case in the first instance, which satisfies me of the impropriety of the course proposed.

"If the court will receive charges, not verified and presented by the common council, merely on a resolution from them, without any examination on their part into the truth of the charges, it would open the door for the presentation of such charges whensoever a change in the members of that body should render the removal of such officers desirable; and if, in addition thereto, charges might be presented for acts done before the appointment of the officer, and for which this court would remove the incumbent, the provision of the constitution fixing the term of office would be of no avail.

* * * * * *

"This court having, after hearing counsel for the respondent and for the complainants in this matter upon the demurrers, filed to the charges therein, do order judgment for respondent upon all the demurrers, and that the order to show cause be discharged."

This holds squarely that an officer cannot be removed by judicial process for acts done while not in office.

1878. *Ex rel. Bancroft v. Weigant,* 14 Hun, 546 (2d Dept.), Barnard, P. J., delivering the opinion of the court, said:

"In March, 1878, the relator was removed from this office of marshal upon charges sustained by proof that Bancroft, the relator, had before his appointment held an office of collector of taxes of the city of Newburgh, and had failed to account for and pay over the money collected by him to the city treasurer. The sole question, therefore, presented is whether proof of this default as collector of taxes establishes 'incapacity, misbehavior or neglect of duty,' as marshal of police. It seems quite clear that it does not. The 'incapacity, misbehavior or neglect of duty,' must be established against the relator in respect to the office of marshal."

The statute under which the proceeding was brought simply provides for "removal by the Mayor for incapacity or misbehavior, or neglect of duty," without referring to the time of such occurrences.

This holds squarely that an officer cannot be removed by judicial process for acts done while not in office.

1887. *Conant v. Grogan,* 6 N. Y. St., 322 (Supreme Ct. Gen'l. Term).

> Learned, P. J.: "The court should never remove a public officer for acts done prior to his present term of office. To do otherwise would be to deprive the people of their right to elect their officers.
>
> "When people have elected a man to office it must be assumed that they did this with knowledge of his life and character, and they disregarded or forgave his faults or misconduct, if he had been guilty of any. It is not for the court, by reason of such faults or misconduct, to practically overrule the will of the people.
>
> "We will not say that on an application like the present, evidence of acts done prior to the term of office might not sometimes be admissible, where such acts would tend to characterize other acts committed during the existing term. In civil and in criminal actions there are a few rather exceptional cases in which proof of other acts of a party may be received in order to characterize the act which is the ground for action or defense. The object is generally to show intent or motive.
>
> "But that doctrine should be very cautiously applied in such a case as the present. The inquiry should be limited to acts done during the existing term of office, unless some light can be thrown on those acts from previous conduct."

It is to be noted particularly that this opinion was concurred in by Judge Parker, subsequently Chief Judge of the Court of Appeals and now counsel for the Assembly Board of Managers.

1902. *Matter of Guden v. Dike,* 37 Misc., 390 (Kings County Sp. Term, Kings Co.) Gaynor, J., stated that the acts complained of occurred before Guden's term of office and that they did not therefore constitute a ground for removal.

The Constitution provides, Art. X, Sec. 1: "The Governor may remove any officer in this section mentioned, within the term for which he shall have been elected; giving to such officer a copy of the charges against him, and an opportunity to be heard in his defense."

Judge Gaynor said:

"When the words of the clause of the Constitution in question are looked to closely, they are found to confer no such power, but the contrary. They give the Governor the power to try and remove officials, but require as a condition precedent to his exercise of such power that 'charges' be first presented against them. The clause does not in so many words say that such charges shall be of acts or omissions in office. Nor does it say they may be of acts committed before the official came into the office. That it means acts or omissions in office, however, we all know. But on what does the claim rest that it means more than that, *i. e.,* that it also means acts committed before the official came into the office, *i. e.,* that his whole life is subject to attack and trial before the Governor? We all know that it means acts in office. To hold that it also means acts committed before the official came into office, would be to read into the clause something which is not there, and which would be most astonishing in this or any other free State if it were there; for it would allow an appeal from the people who elect their officials to the Governor on the question whether the officials of their choice should serve or not. The plain purpose of the provision is only to make the official responsible as an official, *i. e.,* for his conduct in office, to the Governor, and not to make him responsible or answerable at all in his private character."

Section 12 of the Code of Criminal Procedure of the State of New York provides:

"Sec. 12. Its jurisdiction. The court for the trial of impeachments has power to try impeachments, when presented by the Assembly, of all civil officers of the state, except justices of the peace, justices of justices' courts, police justices, and their clerks, for willful and corrupt misconduct in office."

1902. *Re Guden,* 71 A. D., 422 (App. Div., 2nd Dept.) opinion by Judge Bartlett (all concurring):

Art. 1, Sec. 10, of the Constitution of the State of New York provides:

"The Governor may remove any officer in this section mentioned within the term for which he shall have been elected; giving to such officer a copy of the charges against him, and an opportunity of being heard in his defense."

The Governor removed a sheriff under this clause for procuring support during his campaign by promising to appoint his supporter as "Sheriff's Counsel."

The court held that the charges must be such as affect the usefulness of the officer. The court then said:

"But, assuming this to be so, it is said that those acts, in order to furnish the necessary constitutional ground for removal by the executive, must be alleged to have been committed and must have been committed after the beginning of the term of office; and, because the alleged misconduct of Guden occurred before his election, it has been held that it afforded no basis for the action of the Governor.

"In considering this question and in determining this appeal, it is necessary to refer to only one of the charges, to wit, the second of the amended and supplemental charges in the record before us. That charge is as follows: 'That in October, 1901, said Charles Guden illegally, corruptly and contrary to good morals, and with the object of procuring and furthering his election to the office of Sheriff of Kings County at the ensuing November election, promised and agreed that in return for the political support and influence at such election of one Bert Reiss of the Borough of Brooklyn, he, said Charles Guden, would, in the event of his election, appoint said Bert Reiss to the office or position of counsel to the Sheriff of Kings County.'

"As to this charge, the Governor says, in his memorandum filed with the order of removal: 'I find from the testimony given before me that Charles Guden, while a candidate for the office he heads, made a corrupt promise to and agreement with Bert Reiss to appoint him counsel to the Sheriff in consideration of his activity and influence in securing influence and votes for that office in the election of 1901.'

"None of the proof taken before the Governor has been placed before the court in this proceeding. In no point of

view, therefore, can it be assumed that the evidence before him was not sufficient to justify the finding that this charge was true. It will be observed that the accusation is not merely that Guden promised to appoint Reiss counsel to the Sheriff, but that he did this *corruptly*. It amounts substantially to a charge that, induced thereto by some corrupt consideration, the candidate for sheriff promised and agreed with another person that, in the event of his election, he would administer his office in a certain way for the benefit of that person. If such an agreement were corruptly made, its impropriety is not dependent upon the character of the official act subsequently to be performed. Suppose, for example, the case of a county treasurer authorized by law to select a depository for the public moneys under his custody. If, prior to his election, such an officer agreed, for a money consideration, with the president of a particular institution to deposit the public moneys in that institution, there could be no question, I think, as to the impropriety of such an act, although in the absence of any agreement on the subject the institution might properly have been selected. Furthermore, it is to be observed that the corrupt agreement alleged in the particular charge now under consideration related not to a time preceding the election and qualification of the officer, but that it was impossible of execution until he should become vested with the title to the office. In other words, it was a corrupt agreement, the time of performing which was necessarily postponed to a period when he should become a public officer. In this respect the case differs, I think, from any of those cited by counsel or in the opinion below.

"In that opinion the precise question is stated to be 'whether the Governor had jurisdiction to entertain charges and remove from office for alleged acts of Guden committed before he entered into office, or whether his jurisdiction was limited to charges of acts committed by Guden after he came into office only.'

"Whatever the conclusion might be, if the acts committed before Guden entered into office had no direct relation to his subsequent official conduct, I am of the opinion that a cor-

> rupt promise, made before election, to exercise his official powers in a particular way, affords a sufficient basis in law for the removal of the officer by the Governor, under section 1 of Article 10 of the Constitution. It seems to me that the relation of the promise to the subsequent official tenure is so close as to make the act of entering into such a corrupt agreement affect the usefulness of the officer as clearly and directly as could any misconduct committed wholly after the official term began.

The court sustained the removal.

This is an *obiter* dictum and not a holding. The decision was affirmed by the Court of Appeals in *Re Guden,* 171 N. Y. 529, on the ground that the action of the Governor was executive and was not subject to review. According to the opinion of the Court of Appeals, the question discussed in the Appellate Division did not arise at all. The remarks of the Appellate Division must, therefore, be taken as obiter.

It is also to be noticed that as the act charged constituted bribery, there was a breach of the oath of office, according to the Constitution, Art. 13, paragraph 1, which recites that nothing of value has been offered for a vote. It is on this ground that Lincoln in his "Constitutional History of New York," Vol. 4, pp. 724–733, supports the decision of the Appellate Division. It is also true, as appears from the opinion of Judge O'Brien in the Court of Appeals, 171 N. Y. 537, that the corrupt bargain made prior to the election was *actually carried out after the respondent's induction into office.*

> "In one of the charges presented to him, and which appears in the record, it is, in substance, alleged that the sheriff abdicates his powers and duties with respect to the appointment of his subordinates to an irresponsible body of men called a 'patronage committee.' That is to say, he entered into an agreement with this committee to make such appointments of subordinates as it determined upon, and that a list of forty persons was furnished to him by this committee to be appointed as his subordinates, and that *he appointed them.* The appointment of these persons under such circumstances was an official act relating to the powers and duties of his office."

1807. *Commonwealth v. Barry,* 3 Ky. Reps. (Hardin), 229.

This was a proceeding to remove Barry, a clerk of court, under Article IV, Sec. 10, of the Constitution of Kentucky, which provides of clerks that " They shall be removable for breach of good behavior, by the Court of Appeals only, who shall be judges of the fact, as well as the law. Two-thirds of the members present must concur in the sentence." The first two of the charges exhibited against Mr. Barry by the Attorney-General charged him with attempting by bribery to procure a vote for himself for the office of clerk to the Ohio County Court. The Attorney-General demanded that process should issue on all the charges. Counsel appeared for Mr. Barry and stated that he had heard of the prosecution about to be brought against him, and that they desired to question the right of the prosecution to inquire into the misconduct of the defendant except in relation to his office. The Court said:

> " We could never think of putting an officer to the trouble and expense of defending himself upon a charge, while we were satisfied, if proved, it would not be a sufficient cause for removing him from office. We are of opinion that the proceeding under this section of the constitution, must be confined to misconduct in office.
>
> " The constitution, art. 6, § 4, provides that ' laws shall be made to exclude from office, and from suffrage, those who shall thereafter be convicted of bribery, perjury, forgery, or other high crimes and misdemeanors.' As far as the legislature have acted, or may act, under this latter section of the constitution, it would require a conviction under a regular prosecution for the crime charged, and the production of the record of conviction before this court would take up the subject. To determine that this court could, for every misconduct in private life committed by a clerk, remove him from office, would be putting every clerk in the arbitrary power of the court, and might be exercised to the worst of purposes. No process can issue upon the two first charges. We will take time to consider of the others."

1894. *Speed v. Common Council,* 98 Mich. 360.

Speed was appointed head of the law department of the city of Detroit (a statutory office). Subsequently the Mayor lodged

charges against Speed with the Common Council and asked for his removal.

The Court said:

> "* * * the charges preferred, so far as they relate to the acts of Mr. Speed committed before his appointment to and induction into this office, are clearly beyond the jurisdiction of the respondents to determine. There is no provision in the constitution nor in the laws which prevents a person from holding office for misconduct in another office which he held prior to the one to which he was elected or appointed. We have been unable to find any authority which justifies a removal for such previous misconduct. The misconduct for which an officer may be removed must be found in his acts and conduct in the office from which his removal is sought, and must constitute a legal cause for his removal, and affect the proper administration of the office. There is no restriction upon the power of the people to elect, or the appointing power to appoint any citizen to office, notwithstanding his previous character, habits, or official misconduct."

This was an alternate holding, the alternate ground being that the officer was not removable.

1856. *State v. Jersey City,* 25 N. J. Law, 536.

The relator was expelled from the Common Council of Jersey City for taking bribes. An election to fill the office for the remainder of the term was ordered and the relator was re-elected. He then brought mandamus to compel the council to allow him to act as a councilman. Judgment in his favor on the ground that expulsion did not disqualify him for re-election.

There is a dictum in our favor:

> "The question whether Tyrrell, having been expelled from the council upon conviction for official corruption, and having been re-elected, can again be expelled for the same identical offense, is not properly before the court. If it was, we apprehend there could be no difficulty in deciding it. The council have no power to expel a member for acts committed previous to his election."

1859. *State ex rel. Gill v. Common Council,* 9 Wis. 254.

This case is chiefly interesting as containing an expression of opinion concerning an act committed *between* the relator's *appointment* and the *beginning of his term.*

"It only remains therefore to decide whether the return in this case sets forth that the relator was removed for 'due cause.' And we think it does not for the simple reason that it does not set forth for what cause he was removed. There are a number of charges, but the return admits that all except the last relate to acts or omissions of the relator during a prior term of office. Now, without examining those charges, to determine whether they would show good cause for removal, if occurring during the term when the removal was sought, which we think very doubtful, yet we think it a sufficient answer to them that they did not relate to anything occurring during that term. We do not say that in no case could acts done during a prior term justify a removal. Thus, if, after a treasurer was elected, it should be discovered that during his prior term he had committed a defalcation, and had been guilty of gross frauds in the management of his office, it might perhaps be just ground for removal. But where, as in this case, the charges show nothing more than a mere neglect of some formal duty, which the law may have required, involving no moral delinquency, and which, if violations of duty at all, must have been well known to the appointing power, we do not think where they relate to acts during a prior term of office, that they constitute due cause in law for the removal of an officer. For such offences, if offences at all, his reappointment should be regarded as a condonation. For notwithstanding such acts, it does not follow but that after his reappointment he may have fulfilled his duties with the strictest propriety.

"In relation to the last charge, the return avers that it related to acts subsequent to the reappointment in May, 1859. But as contended by the relator, this does not necessarily show that those acts did not occur during his prior term; because by the law his new term did not commence until a number of days after his appointment."

The language above quoted, although applying specifically to acts done during the prior term, constitutes by necessary implication a dictum to the effect that acts entirely out of office could not be made a basis for removal. The last brief paragraph above quoted is particularly interesting as showing the opinion of the court as to acts occurring between election and induction into office.

1895. *Thurston v. Clark,* 107 Cal., 285.

Section 772, Cal. Penal Code, provided that any officer could be removed from office by the Superior Court if he were "guilty of charging and collecting illegal fees for services rendered, or to be rendered, in his office, or has refused or neglected to perform the official duties pertaining to his office."

Certain "specifications" of the "complaint" against such an officer, alleged acts done by him during a prior term in the same office.

The court held that a demurrer to these specifications should be sustained, saying:

> "* * * an officer cannot be removed from office for a violation of his duties while serving in another office, or in another term of the same office. Each term of an office is an entity separate and distinct from all other terms of the same office. If the defendant violated any duty imposed upon him as an incumbent of the office of sheriff during a former term, the law furnishes a mode or modes for his punishment; but to remove him from an office to which he has been subsequently elected is not the punishment for such a violation of duty prescribed by any law of this state."

The language above quoted, while applying specifically to acts done in a prior term, is to be taken as a dictum by implication that acts done before the respondent held any office at all could not *a fortiori* have been made a ground for removal.

State of Iowa v. Welsh, 199 Iowa, 19.

The court said:

> "It is doubtless true that a removal cannot be had on account of misconduct in another office, but only so because such a provision may not be included among the statutory

causes of removal. Speed v. Common Council, Detroit, 98 Mich. 360. This may also be said of offences committed previous to being inducted into the particular office. Commonwealth v. Shaver, 3 Watts & S. 338; Tyrrell v. Common Council, Jersey City, 25 N. J. Law 536."

1895. *Foster* (Roger) on the Constitution (Vol. 1, p. 598):

"It seems an officer should not be impeached for an offence committed before his official term."

29 *Cyc.*, 1410:

"Where removal may be made for cause only, the cause must have occurred during the present term of the officer. Misconduct prior to the present, even during a preceding term, will not justify a removal."

Wrisley Brown, Assistant Attorney-General, of counsel for Managers on the part of the House of Representatives in the Archbald impeachment, writing in the Harvard Law Review, June, 1913, p. 704, says of the doctrine that an officer can be impeached for acts preceding his current term:

"Such a doctrine would probably be vicious in principle, for, if caried to an extreme, it might well develop an actual case of relentless vengeance suggesting the immortal story of Jean Valjean."

Removal Cases as Authority for Impeachments.

There is a general agreement that the common law governing removals and impeachments is the same. Thus, in *State v. Bourgeois* (45 La. Ann., 1350), a removal case, the court says:

"The learned counsel for the defendant urge, however, that a suit under Art. 201 of the Constitution cannot be assimilated to proceedings by impeachment. The effect of the conviction may be different, but the laws applicable to the commission of the offence are the same."

In *Matter of Merrit* (N. Y.), a removal case, the court said:

"This proceeding is, in respect to the mode of conducting it, somewhat analogous to impeachments, and the rules governing those proceedings should generally be applied to the presentation of charges before the court against a justice."

Foster in his work on the Constitution (p. 598) cites this same removal case as authority for the proposition that

> "An officer should not be *impeached* for an offence committed before his official term."

In all the great impeachment trials the removal cases have been cited and considered as authorities, and, as a matter of reason, the substantial similarity of the two classes of cases is apparent.

1872. Trial of George G. Barnard. In the Court of Impeachment of the State of New York.

On pages 147–148 of the record it appears that of the articles of impeachment preferred against Judge Barnard by the Assembly, articles Nos. 21, 22, 23, 24, 25, 30, 32, 33, 34, 35 and 36, referred to acts committed by Judge Barnard during a term of office as Judge of the Supreme Court beginning January 1, 1861, and ending December 31, 1868. On January 1, 1869, he began a new term of office, during the course of which the proceedings for impeachment were brought. Judge Barnard demurred to the articles above referred to on the ground that the acts alleged more than occurred during his prior term of office. Mr. Beach argues the demurrer for Judge Barnard from page 151 to page 164. His argument is followed by an extraordinarily able argument by Mr. Van Cott, one of the Assembly managers. Throughout the entire course of his very learned and thorough argument no case is cited in which impeachment was brought for acts committed while the defendant was a private citizen, and there is an assumption that the articles demurred to are to be sustained not because impeachment lies for acts out of office, but merely because the acts alleged occurred during a prior term of the same office.

On p. 191 of the record it appears that a vote was taken on the pleas in question and that they were overruled by a vote of 23 to 9.

This case is distinguished from the principal case by the fact that the offenses alleged occurred not while the respondent was a private person, but while he was holding a prior term of the same office.

1853. Trial of impeachment of Judge Levi Hubbell in the

Wisconsin Court for the Trial of Impeachments. Extract from the Journal:

"Tuesday, June 14.

"Mr. Dunn introduced the following resolutions:

"Resolved, That this Court has the constitutional jurisdiction to try an impeachment preferred by the Honorable 'The Assembly of the State of Wisconsin.'

"Resolved, That this Court on the trial of the impeachment now pending, have jurisdiction to enquire into offences charged to have been committed as well during the former term of office of Levi Hubbell, Judge of the Second Judicial Circuit of this State, as into offences charged to have been committed during the present term of his said office.

"And the question being upon the adoption of said resolutions:

"Mr. Smith called for a division,

"Which was had,

"And the question being upon the adoption of the first resolution,

"It was decided in the affirmative,

"And the ayes and noes being required,

"Those who voted in the affirmative were

"Messrs. Alban, Allen, Bashford, Blair, Bovee, Bowen, Briggs, Cary, Dunn, Hunter, Lewis, McLane, Miller, Pickney, Prentice, Reed, Smith, Seaton, Stewart, Sterling, Vittum, Wakely, Whittlesey and Weil — 24.

"None voted in the negative.

"The question being upon the adoption of the second resolution,

"It was decided in the affirmative,

"And the ayes and noes being required,

"Those who voted in the affirmative were

"Messrs. Allen, Bashford, Blair, Bovee, Bowen, Briggs, Cary, Dunn, Hunter, Lewis, McLane, Miller, Pickney, Prentice, Seaton, Stewart, Vittum, Whittlesey and Weil — 19.

"Those who voted in the negative were

"Messrs. Alban, Reed, Smith, Sterling and Wakeley — 5."

1871. Impeachment of David Butler, Governor of Nebraska.

Eleven articles of impeachment were brought against Governor Butler.

Article 1 related to misappropriation of public funds during 1867 and 1869.

Article 2, receipt of bribes in return for executive favors, 1869–1871.

Article 3, the corrupt procurement as Governor of the issue of treasury warrants.

Article 4, in 1869 the corrupt receipt of a deed of land to influence his conduct in locating a State asylum, as Governor.

Article 5, in 1869, as Governor, and member of the Board of Regents, recklessly making a construction contract for an excessive price.

Article 6, in 1871, deceiving the Legislature by false report made as Governor.

Article 7, in 1869, as Governor, unlawfully loaning public funds without security.

Article 8, as Governor, in 1869, appropriating to his own use moneys from the Board of Immigration.

Article 9, as Governor, in 1870, issuing to one railroad patents of land reserved by one Legislature to another.

Article 10, as Governor, in 1869, selling to private persons at private sale lots of land belonging to the State and appropriating the purchase money.

Article 11, as Governor, in 1869, the same offense as to the different lots of land.

The Governor does not appear to have demurred to any of these articles, nor in his answer to have raised the defense that a portion of them did not occur during his current term. Moreover, the case is plainly distinguished from ours in that, the offenses not occurring during the present term, all occurred during a prior term in the same office. The vote on the article was as follows:

Article	Guilty	Not Guilty
1	9	3
2	5	7
3	5	7
4	1	11

Article	Guilty	Not Guilty
5	..	12
6	5	7
7	3	9
8	..	12
9	..	12
10	..	12
11	6	6

1912. Trial of Impeachment of Judge Robert W. Archbald in the United States Senate.

Thirteen articles of impeachment were brought against Judge Archbald. The following table shows whether the offenses alleged in each article were committed during Judge Archbald's prior term as a member of the U. S. District Court or during his current term as a member of the Commerce Court. It also shows the vote and result as to each article:

Art.	Relates to conduct in	Guilty.	Not Guilty.	Verdict.
1	Commerce Court	68	5	Guilty
2	Commerce Court	46	25	Not Guilty
3	Commerce Court	60	11	Guilty
4	Commerce Court	52	20	Guilty
5	Commerce Court	66	6	Guilty
6	Commerce Court	24	45	Not Guilty
7	U. S. District Court	29	36	Not Guilty
8	U. S. District Court	22	42	Not Guilty
9	U. S. District Court	23	32	Not Guilty
10	U. S. District Court	1	65	Not Guilty
11	U. S. District Court	11	51	Not Guilty
12	U. S. District Court	19	46	Not Guilty
13	Commerce Ct. & U. S. Dist. Court	42	20	Guilty

The following expressions of opinion by the Senators showing that the result was largely due to doubt as to the propriety of convicting Judge Archbald for acts during a prior term are taken from the record:

P. 1632. Senator Stone asks to be excused from voting on Articles 7, 8, 9, 10, 11 and 12 because they "relate to charges of misbehavior alleged against the respondent while he was district judge."

Senator Swanson:

> "I have not been able to reach a conclusion satisfactory to myself as to whether charges specifying offenses prior to

the appointment of the respondent as a circuit judge can be tried under this impeachment. Consequently I ask to be excused from voting on Articles 7, 8 and 9."

P. 1634. Senator Smith asks to be excused from voting upon Article 7 as he has

"Not reached a conclusion as to whether these acts done prior to the occupancy of the defendant of a seat on the Commerce Court can now be the subject of impeachment."

P. 1634. Senator Borah filed the following statement:

"In voting not guilty upon those counts which charge misconduct at a time when said R. W. Archbald was district judge, an office which he no longer holds, I do so because of a doubt I entertain as to the law. I am not prepared to say we can not impeach a man for offenses or acts committed while holding an office which he no longer holds. But the legal proposition, to my mind, is involved in doubt. Furthermore, if we had a clear and undoubted right as a legal proposition to do so I would hesitate to establish the precedent except upon a peculiar and extraordinary necessity."

P. 1635. Senator Bryan filed the following statement:

"I am convinced that articles of impeachment lie only for conduct during the term of office then being filled; and that the 'good behavior' required by the Constitution relates to the future and not to the past; to what the officer does after, and not to what the citizen had done before, he is nominated and confirmed."

P. 1635. Senator Works filed a statement in which he said:

"I am of the opinion that the respondent can not be impeached for offenses committed before his appointment to his present office. The Constitution provides, in express terms, that judges 'shall hold their offices during good behavior.' Therefore, if a judge has maintained his good behavior during that time he has done nothing to forfeit his office. The condition upon which he is entitled to continue in office is good behavior during his service, not before. Conversely, it is only bad behavior during the same time that can forfeit

the office or warrant the impeachment. Neither can such misbehavior, committed before his appointment, warrant a judgment disqualifying him from holding office, because such a judgment can be rendered only on his impeachment, which cannot be had for such offenses. Such offenses might show his unfitness to hold office and properly prevent his appointment, but they cannot be cause for his impeachment."

P. 1636. Senator Smith and Senator Newlands ask to be excused from voting on

"each of the other articles where they involve acts prior to the respondent's appointment to the Commerce Court."

P. 1638. Senator Brandagee filed the following statement:

"I vote 'not guilty' on articles 7 to 12, inclusive, because I do not think that impeachment will lie for offenses alleged to have been committed by respondent while holding an office which he does not now hold and did not hold at the time the articles of impeachment were adopted by the House of Representatives."

P. 1647. The following are extracts from reasons filed by Senators:

Senator Brandagee:

"I vote 'not guilty' on article 13 because it alleges offenses some of which are alleged to have been committed by the respondent while he was a judge of the United States District Court, which office he does not hold at present and did not hold at the time the articles were adopted by the House of Representatives; and, also, because it is impossible to separate the offenses alleged to have been committed as district judge from those alleged to have been committed as circuit judge, and because I do not think that all the allegations have been proven."

Senator DuPont:

"My vote of 'not guilty' upon the articles of impeachment against Judge R. W. Archbald, numbered 7, 8, 9, 10, 11, 12 and 13, was based, in the main, upon the fact that the

offenses therein charged were alleged to have been committed prior to January 31, 1911, when he was not holding his present office. In my judgment, the legality of the impeachment, so far as such offenses are concerned, is questionable, and in any event a precedent fraught with danger is created."

Senator Owen:

"Impeachment is the exercise of political power and not the exercise of mere judicial authority under a criminal code. Impeachment is the only mode of removing from office those persons proven to be unfit because of treason or high crime and misdemeanor.

"Whether these crimes be committed during the holding of a present office or a preceding office is immaterial if such crimes demonstrate the gross unfitness of such official to hold the great offices and dignities of the people.

"A wise public policy forbids the precedent to be set that promotion in office of a criminal precludes his impeachment on the ground of his discovered high crimes and misdemeanors in a previous office from which he has just been promoted.

"For these reasons it is my judgment that articles 7, 8, 9, etc., insofar as they charge crimes committed by Robert W. Archbald while United States District Judge, comprise impeachable offenses and may be alleged against him as judge of the Commerce Court."

P. 1648:

"Mr. Poindexter states as to articles 7, 8 and 9 that, although the offenses charged were committed while the respondent was district judge and before he was appointed circuit judge, yet, since the penalty for impeachable offenses is not only forfeiture of office, but disqualification to hold office thereafter, I am of the opinion that the offenses charged in these articles, although committed before respondent's appointment as circuit judge, nevertheless disqualify him, on impeachment therefor, from holding office as such circuit judge or as judge of the Commerce Court. There is no statute of limitation nor law of limitations in impeachment proceedings."

P. 1650. Opinion of Senator Root:

"* * * I have no doubt that the respondent is liable to impeachment for acts done while he was a judge of the district court and that the Senate has jurisdiction to try him for such acts."

Senator Lodge concurs in this opinion.

1913. Wrisley Brown, Assistant Attorney-General, of counsel for Managers on the part of the House of Representatives in the Archbald impeachment, writing in the Harvard Law Review, June, 1913, pp. 702–704, says:

"There were thirteen articles exhibited against Judge Archbald * * * Articles seven to twelve, inclusive, charged misconduct as a United States district judge, which office the respondent held immediately prior to his appointment as circuit judge. These charges related to the alleged use of his official influence to secure credit and other favors from parties having litigation in the court over which he presided; the acceptance of a purse from certain members of the bar of his court; a trip abroad at the expense of a magnate of large corporate interests; and the designation of a general railroad attorney to be jury commissioner. * * * The trial resulted in his conviction by an overwhelming vote on the first, third, fourth, fifth and thirteenth articles. * * *

"All the articles charging offenses which were committed while the respondent held the office of United States District Judge failed of conviction. The considerations which brought about this result can only be surmised, but it is likely that it was due to a cautious disinclination on the part of the Senate to establish the precedent that a civil officer may be impeached for offenses committed in an office other than that which he holds at the time of his impeachment. Such a doctrine would probably be vicious in principle, for, if carried to an extreme, it might well develop an actual case of relentless vengeance suggesting the immortal story of Jean Valjean."

DOCUMENTS OF THE ASSEMBLY OF THE STATE OF NEW YORK, SEVENTY-SIXTH SESSION

ASSEMBLY DOCUMENTS

Vol. 6.

No. 123.

In Assembly, June 23, 1853.

REPORT OF THE JUDICIARY COMMITTEE RELATIVE TO POWER OF IMPEACHMENT.

Mr. Weeks, from the committee on the Judiciary, to which was referred the resolution of the House directing said committee to enquire and report at the earliest moment:

First. Whether a person could be impeached who at the time of his impeachment was not a holder of an office, under the laws of this State.

Second. Whether a person could be impeached and deprived of his office for mal-conduct, or offences done or committed under a prior term of the same or any other office.

Reports:

That the committee have barely had time to give the matter referred to them that consideration which its importance demands; in the time, however, they have given it that attention, which has enabled them to arrive at a satisfactory conclusion in their own minds, without being able to give the reasons as fully to the House, as they could wish to have done, had time allowed.

The only clause in the constitution relating to judgments upon impeachments, provides that judgments in such cases "shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under this State; but the party impeached shall be liable to indictment and punishment according to law."

From this and from the theory upon which our government is based, the committee have come to the conclusion:

First. That no person can be impeached who was not at the time

of the commission of the alleged offence, and at the time of the impeachment, holding some office under the laws of this State.

That the person impeached must have been in office at the time of the commission of the alleged offence, is clear from the theory of our government, viz.: that all power is with the people, who if they saw fit might elect a man to office guilty of every moral turpitude, and no court has the power to thwart their will, and say he shall not hold the office to which they have elected him; a contrary doctrine would subvert the spirit of our institutions.

It is equally clear from the terms of the Constitution, that the person must be in office at the time of the impeachment: this instrument provides but two modes of punishment, viz., removal from office, or removal and disqualification to hold office; in either mode of punishment the person must be in office, for removal is contemplated in both cases, which cannot be effected unless the person is in office.

The courts are the only tribunals that have jurisdiction over a delinquent, after his term of office has expired, to punish him for offences committed in the discharge of the duties of his office.

The committee have further come to the conclusion:

Secondly. That no person can be impeached and deprived of his present term of office, for offences alleged to have been committed during a prior term of the same or any other office.

Neither by the Constitution nor by our laws is there any period limited, in which an impeachment may be found; it is but fair, therefore, to infer, that the *intention* was to confine the time to the term of office during which the offences were alleged to have been committed, indeed, any other conclusion would lead to results, which could not be sustained, for who can say, but that the people knew of this mal-conduct, these offences, and elected the individual notwithstanding; true, an extreme case might be put of fraud committed on the last day of the term of an office, to which office the individual might be immediately re-elected; yet, who could say this was not known to the people? How is the matter to be settled? The mere statement of the question shows the dilemma in which we would be placed at every election, if the tenure or stability of an office depended upon a legal enquiry

as to whether the people knew the characters of the individuals they had elected to office, and had exercised a proper discretion.

However much it may be desired to have men of high integrity and honesty fill our public offices of trust and honor, yet by our Constitution and the fundamental principles of our Government, no particular scale of integrity, honesty or morality is fixed. No inquisition as to what character had been, can be held; it is enough that the people have willed the person should hold the office. And the courts which are but the mere creatures of the public, will have no power to interfere.

The Constitution provides, as we have seen, that a person cannot be impeached after he is out of office, then if the same person should be re-elected to the same office, a year afterwards, would the right of impeachment be revived? In fine, by his re-election, would he incur any other liabilities, or acquire any other rights than those incident to his present term of office? We think a moment's reflection would convince every person that it could not.

Again, could an officer be deprived of his present office by impeachment for mal-conduct, in another and different office, or even the same office, twenty years before his present term commenced? if not, could he after one year or one moment had elapsed? where is the difference in the principle, the time is nothing, the question is, is he out of office, it matters not if he is the next moment inducted in.

The committee think it clear, in every light they have been able to view this matter, that the Constitution intended to confine impeachments to persons in office, and for offences committed during the term of office from which the person is sought to be removed. In pursuance of this conclusion, the committee recommend to the House the adoption of the following resolution:

Resolved, That the committee of investigation into the official conduct of State officers and of persons lately, but not now holding office, be instructed:

1. That a person whose term of office has expired, is not liable to impeachment for any misconduct under section 1, article 6 of the Constitution.

2. That a person holding an elective office, is not liable to be

impeached under section 1, article 6 of the Constitution, for any misconduct before the commencement of his term, although such misconduct occurred while he held the same or another office, under a previous election.

All which is respectfully submitted.

JAMES H. WEEKS, *Chairman.*
C. R. INGALLS,
ROBERT D. LIVINGSTON,
O. H. HASTINGS,
A. A. HENDEE,
J. BURNET,
Committee.

Lincoln in his Constitutional History of New York, vol. 4, p. 606, says, concerning the Barnard case and the foregoing opinion:

> "The course adopted by the court in this case can scarcely be deemed an authority for an impeachment where all the alleged misconduct occurred during a previous term for the reason that some of the charges on which the judge was convicted relate to misconduct during his present term, and these charges were obviously within the jurisdiction of the court, and a conviction on them was sufficient to sustain its judgment. The opinion expressed by the Assembly Judiciary Committee in 1853 has not yet been overruled so far as it relates to the jurisdiction to impeach for misconduct wholly occurring during the previous official term."

1872. Proceedings in the Senate in Relation to the Removal of Horace G. Prindle, County Judge and Surrogate.

At the request of the Assembly, the Governor submitted to the Senate fifty-four charges against Judge Prindle, and requested his removal. Judge Prindle demurred to all the charges except the fourth on the ground that they did not state acts during his present term of office, "but alleged official misconduct which occurred during the prior and former terms of office of the respondent." After a lengthy argument by counsel the Senate, in secret session, voted to overrule the demurrer.

This case is distinguished from ours by the fact that the charges in question related to misconduct during a *prior term.*

1872. Matter of the Removal of Judge John H. McCunn.

The Assembly investigated charges against John H. McCunn and requested the Governor to recommend to the Senate that the Senate remove him from his office as justice of the Superior Court of the City of New York. The Senate sat to hear testimony and determine this question.

Judge McCunn's first term as Justice of the Superior Court extended from January 1, 1866, to December 31, 1869. His second term extended from January 1, 1870, until the date of his impeachment in 1872. Eight charges were preferred against him. Charges 3, 5, 6 and 7 related exclusively to acts committed during his first term. Charge 6 was held not proven. All the other charges were held to be proven, and it was unanimously resolved that he be removed from office. There was no attempt to charge him with any acts committed before he began his first term. The case is distinguished from ours by the fact that the acts charged occurred either during McCunn's current term of office or during a *prior term* of the same office.

1899. State of Iowa v. Welsh, 109 Iowa 19.

Action for removal of sheriff for misconduct. The State appealed from a judgment on a direct verdict for the defendant.

> "II. The defendant was re-elected sheriff of Johnson county at the general election of 1898, and during his second term, commencing January 1st of the year following, this action for his removal was begun. On motion, the particular averments of official misconduct and neglect of duty during the first term were stricken from the petition on the ground that removals are only allowable for acts during the term being served. The statute contains no such limitation. The very object of removal is to rid the community of a corrupt, incapable or unworthy official. His acts during his previous term quite as effectually stamp him as such as those of that he may be serving. Re-election does not condone the offense. Misconduct may not have been discovered prior to election, and, in any event, had not been established in the manner contemplated by the statute. The defendant was entitled to the office until his successor

was elected and qualified. Code, section 1265. Being his own successor, the identical officer continued through both terms. His disqualification to continue in the particular office results from the commission of some of the prohibited acts during his incumbency. State v. Bourgeois, 54 La. 1350 (14 South. Rep., 28); Blackenridge v. State, 27 Tex. App., 513 (11 S. W. Rep., 631). This has been the uniform rule in impeachment trials, where, coupled with removal from office, is the penalty of disqualification to hold any office of honor, trust or profit under the State. In New York, Judge Barnard was impeached during his second term for acts committed in that previous. The same was true of the impeachment of Judge Hubble, of Wisconsin, and Gov. Butler, of Nebraska. Whether the impeachment may take place after the expiration of the term or resignation is a mooted question. See arguments on the trial of Belknap before the United States Senate. The supreme court of Nebraska, in an able and exhaustive opinion by Mr. Justice Norval, held, in State v. Hill, 37 Neb., 80 (55 N. W. Rep., 794), that, as the primary object is removal from office, ex-officials cannot be impeached, saying: 'The object of impeachment is to remove a corrupt or unworthy officer. If his term has expired, and he is no longer in office, that object is attained, and the reason of his impeachment no longer exists; but, if the offender is still an officer, he is amenable to impeachment, although the acts charged were committed in his previous term of the same office.' We do not overlook Thurston v. Clark, 107 Cal., 285 (40 Pac. Rep., 435), where in referring to the previous case of Smith v. Ling, 68 Cal., 324 (9 Pac. Rep., 171), holding an action for removal could not be maintained after the expiration of the term, the court said: 'By parity of reasoning, an officer cannot * * * be removed from office for a violation of his duties while serving in another office, or in another term of the same office. Each term of office is an entirety, separate and distinct from all other terms of the same office.' It is doubtless true that a removal cannot be had on account of misconduct in another office, but only so because such a

provision may not be included among the statutory causes of removal. Speed v. Common Council of Detroit, 98 Mich., 360, 39 Am. St., 555 (57 N. W. Rep., 406). This may also be said of offenses committed previous to being inducted into the particular office. Com. v. Shaver, 3 Watts & S., 338; Tyrrell v. Common Council of Jersey City, 25 N. J. Law, 536. For many purposes each term of office is separate and entire. This is especially true with respect to the obligation of sureties. But there is no reason for so holding as to the incumbent. *Being his own successor, there is no interregnum.* His qualification marks the only connection between his terms. The commission of any of the prohibited acts the day before quite as particularly stamps him as an improper person to be intrusted with the performance of the duties of his particular office, as though done the day after. The facts of guilt with respect to that office warrants the conclusion that he may no longer with safety be trusted in discharging his duties."

This case is also distinguished from the case at bar by the fact that the acts complained of were done during a *prior term* of the *same office.*

1893. State v. Bourgeois, 45 La. Ann. 1350.

Action to remove a sheriff under article 201 of the Constitution and Act No. 135 of 1880.

Specifications 1st, 2nd, 3rd and 9th charged official malfeasance during the defendant's prior term in the same office. The court said, page 1354:

> " The defendant has been uninterruptedly in office since the commission of the acts complained of.
>
> " There was by his re-election *no interruption in his official tenure. At no time was there an interregnum.* He was by the constitution to continue in office until his successor was elected and qualified. He was his own successor, the identical officer in both terms against whom charges are preferred."

Section 201 of the Constitution, above referred to, provided that officers might be removed for the causes specified in section 196. This section provided removal for " high crimes and misde-

meanors, for nonfeasance or malfeasance in office, for incompetency, for corruption, favoritism, extortion or oppression in office, or for gross misconduct or habitual drunkenness."

The case is clearly distinguished from ours on the ground that when the acts complained of occurred the defendant was serving a prior term in the same office. The language shows that if this had not been the case, the decision would have been different. (Page 1354.)

The President.— My brothers, I have a very strong notion of how we should deal with the present motion toward the respondent, or, rather, how we should deal with the objections which he has interposed to these articles of impeachment.

I think we should follow a course not infrequently adopted in usual ordinary judicial proceedings. In other words, we should reserve the determination of this question until the final decision of the case. That is often done, as everyone of you, whether members of the Court of Appeals or members of the Senate, know, who have either practiced before courts or who have themselves occupied judicial positions. You know that it is not an unusual practice especially where, as in the present case, the Court is not only the trier of the question of law but it is the trier of the question of fact.

There are reasons that make it peculiarly proper, it seems to me, to adopt that course in the present case. In the first place, in an ordinary judicial proceeding, a trial by the Court, the Court is required to separate as far as possible the questions of fact from those of law so if the decision is reviewed it may distinguish between what matters the Court decided as matter of fact and what as matters of law. That is not possible under the procedure that takes place in a Court for the trial of impeachments. The final determination is by a vote of guilty or not guilty, and that of course requires a determination of the question of law as to whether the facts which appear to be proved justify the impeachment of the respondent or not. I say that it has been done and it is very difficult to separate one from the other, though it may if either the charges in this case were frivolous or if the objections in this case to the charges were frivolous we might readily dispose of them entirely. I wish you would not even intimate any opinion

as to the merits further than to say that in my judgment you cannot characterize either the charges or the objections as of that character. Not only this, but it has been almost the universal custom so far as I know, gentlemen, and so far as my reading and familiarity with the proceedings by impeachment to decide the question as to whether the acts charged were impeachable offenses or not, to discuss with and submit it with the final submission of the case to the Court. In many of the cases, the most prominent, the dispute has not been so much as to the facts as to that very question. In the most momentous prosecution by impeachment of which the books give us any record, that of the President of the United States Andrew Johnson, of course the turning point in that case, at least the dominant point in that case, was the question whether the removal of Mr. Stanton was a violation of the tenure of office act, and whether if it was a violation of the tenure of office act that act was or was not constitutional; the uniform current of authority previous to that time having been to the effect that the President under the Constitution had an unlimited power of removal though there were required the consent of the Senate to the appointment to office. The major part, the great part of the argument of the distinguished counsel in that case was addressed to those questions. Now, gentlemen, there is no subject I may say on which there has been more divergence of opinion than as to what constitute and what do not constitute impeachable offenses. On that question the greatest statesmen, the greatest publicists, the greatest advocates and text writers are not in accord but many times diametrically opposed one to the other. Therefore it seems to me that that constitutes a strong reason for the course that should be taken.

There is something else to be said too; if it were an original question, it seems to me not wise to decide this case piecemeal, to decide one-half to-day and one-half next week. Of course, what decision was made to-day or what was the vote of any member of this Court to-day would not be binding when you come to the final determination, but is it not wiser first for us not to commit ourselves even to any extent. It is not that I fear so much the fact of being inconsistent. The wisest men change their opinions, and as a Judge I certainly should not be ashamed to ac-

knowledge if I was convinced that I was wrong at a later stage of the case, to acknowledge it and to vote the other way, but it seems to me it is much wiser, that the counsel will proceed much more easily, if they feel that all the members of the court have an open mind on this question.

There is another reason, too. It is peculiar. The Court of Impeachment when you come to the final vote requires a vote of two-thirds. Under the provisions of the Penal Code a decision of this question that has been raised requires only the vote of the majority. Suppose a majority decide that the articles should be overruled but the minority greater than one-third decides the other way. How can it then be disposed of on the final argument? Now, this is not an imaginary case. It is a case that actually happened in the impeachment of Mr. Belknap, Secretary of State under General Grant, which the old members of the Court will remember, because it was a case that excited a great deal of public interest. Mr. Belknap having resigned, the question was whether that defeated the impeachment. A majority of the Court held that it did not. They then proceeded to try, and in the final determination more than one-third voted to acquit him, though not a majority and nearly all the members that voted to acquit put it on the question of law and not on the question of fact.

Lastly, there is another consideration. This is as I have already stated a matter of great importance, not only in this particular case but as a precedent on the construction of the Constitution, for what causes a public officer shall be removed from office. Now, I am frank to say for myself I should prefer to have an opportunity to reflect more on the arguments that have been adduced before us by the very eminent counsel on each side of this case. It would be very inconvenient to adjourn now to let us look up the authorities, to consider the points carefully that have been raised, and I can only speak, of course, from my personal preference, but I would much prefer to have the question left open to the final determination, and as I have already said I am not suggesting any innovation in judicial proceedings, and therefore for the purpose of disposing of this case I shall overrule these objections pro forma simply without meaning to ex-

press any opinion whatever on the merits, and if you agree with me that will be the case taken, but I hope some one of our number will ask for a vote on that disposition of the case.

Senator Wagner.— I move, in accordance with the opinion given by the Chair, that the final decision of this question be left open until the submission of the case in its entirety, and at this time to pro forma overrule the objection.

Senator Simpson.— I second the motion.

The President.— All in favor will say Aye; opposed, No. I am uncertain. The Clerk will call the roll.

The Clerk.— Senator Argetsinger.
Senator Argetsinger.— Aye.

The Clerk.— Judge Bartlett.
Judge Bartlett.— Aye.

The Clerk.— Senator Blauvelt.
Senator Blauvelt.— Aye.

The Clerk.— Senator Boylan.
Senator Boylan.— Aye.

The Clerk.— Senator Brown.
Senator Brown.— Aye.

The Clerk.— Senator Bussey.
Senator Bussey.— Aye.

The Clerk.— Senator Carroll.
Senator Carroll.— Aye.

The Clerk.— Senator Carswell.
Senator Carswell.— Aye.

The Clerk.—Judge Chase.
Judge Chase.— Aye.

The Clerk.— Senator Coats.
Senator Coats.— Aye.

The Clerk.— Judge Collin.
Judge Collin.— Aye.

The Clerk.— Judge Cuddeback.
Judge Cuddeback.— Aye.

The Clerk.— Judge Cullen, President.
The President.— Aye.

The Clerk.— Senator Cullen.
Senator Cullen.— Aye.

The Clerk.— Senator Duhamel.
Senator Duhamel.— No.

The Clerk.— Senator Emerson.
Senator Emerson.— Aye.

The Clerk. —Senator Foley.
Senator Foley. — Aye.

The Clerk.— Senator Frawley.
Senator Frawley. — Aye.

The Clerk.— Senator Godfrey.
Senator Godfrey.— Aye.

The Clerk.— Judge Gray.
(No response.)

The Clerk.— Senator Griffin.
Senator Griffin.— Aye.

The Clerk.—Senator Heacock.
Senator Heacock.— Aye.

The Clerk.— Senator Healy.
Senator Healy.— Aye.

The Clerk.— Senator Heffernan.
Senator Heffernan.— Aye.

The Clerk.—Senator Herrick.
Senator Herrick.— No.

The Clerk.— Senator Hewitt.
Senator Hewitt.— Aye.

The Clerk.— Judge Hiscock.
Judge Hiscock.— Aye.

The Clerk.— Judge Hogan.
Judge Hogan.— Aye.

The Clerk.— Senator McClelland.
Senator McClelland.— Aye.

The Clerk.— Senator McKnight.
Senator McKnight.— No.

The Clerk.— Senator Malone.
Senator Malone.— Aye.

The Clerk.— Judge Miller.
Judge Miller.— Aye.

The Clerk.— Senator Murtaugh.
Senator Murtaugh. — Aye.

The Clerk.—Senator O'Keefe.
Senator O'Keefe.— No.

The Clerk.— Senator Ormrod.
Senator Ormrod.— Aye.

The Clerk.— Senator Palmer.
Senator Palmer.— Aye.

The Clerk.— Senator Patten.
Senator Patten.— Aye.

The Clerk.— Senator Peckham.
Senator Peckham.— No.

The Clerk.— Senator Pollock.
Senator Pollock.— Aye.

The Clerk.— Senator Ramsperger.
(No response.)

The Clerk.— Senator Sage.
Senator Sage.— Aye.

The Clerk.— Senator Sanner.
Senator Sanner.— Aye.

The Clerk.— Senator Seeley.
Senator Seeley.— No.

The Clerk.—Senator Simpson.
Senator Simpson.— Aye.

The Clerk.— Senator Stivers.
Senator Stivers.— Aye.

The Clerk.—Senator Sullivan.
Senator Sullivan.— Aye.

The Clerk.— Senator Thomas.
Senator Thomas.— Aye.

The Clerk.— Senator Thompson.
Senator Thompson.— Aye.

The Clerk.— Senator Torborg.
Senator Torborg.— Aye.

The Clerk.— Senator Velte.
Senator Velte.— Aye.

The Clerk.— Senator Wagner.
Senator Wagner.— Aye.

The Clerk.— Senator Walters.
Senator Walters.— Aye.

The Clerk.— Senator Wende.
Senator Wende.— Aye.

The Clerk.— Judge Werner.
Judge Werner.— Aye.

The Clerk.— Senator Wheeler.
Senator Wheeler.— No.

The Clerk.— Senator White.
Senator White.— Aye.

The Clerk.— Senator Whitney.
Senator Whitney.— Aye.

The Clerk.— Senator Wilson.
Senator Wilson.— Aye.

Senator Griffin.— Has the vote been announced?

The President.— The Clerk will give you the vote.

The Clerk.— Forty-nine in the affirmative; seven in the negative.

The President.— The objections to the sufficiency of the articles having been overruled it is now incumbent for the respondent to answer.

Mr. Herrick.— May it please your Honor, Mr. President, I had the answer signed by the respondent but I do not find it here.

The President.— It is not necessary under the Code to have a formal answer.

Mr. Herrick.— No, but I wanted to get one signed by him. I had it. I will file this answer then. I will file the answer of the respondent. We had drawn them up in the alternative so that if we succeeded in our motion it would be to a portion of the articles and the other one would be to the whole of the articles, and that one I now file and request the Clerk to read it.

The President.— Is this the answer you wish to interpose in the present state of the case?

Mr. Herrick.— Yes, sir; here is the original signed by the respondent which I ask to have read.

The President.— The Clerk will read the answer.

The Clerk read the answer as follows:

STATE OF NEW YORK,

IN THE

COURT FOR THE TRIAL OF IMPEACHMENTS.

THE PEOPLE OF THE STATE OF NEW YORK, BY THE ASSEMBLY THEREOF *against* WILLIAM SULZER, as Governor.	*Answer.*

The above-named respondent, William Sulzer, in answer to the articles of impeachment preferred against him, answers and alleges as follows:

First.— In answer to the first article of impeachment this respondent admits that he is the Governor of this State for the

term beginning January 1, 1913, having been elected at the General Election held on the 5th day of November, 1912, and admits that he made and filed in the office of the Secretary of State, a statement of moneys received, contributed or expended, as in said first article set forth and contained; but denies each and every other allegation, matter and fact therein set forth and contained.

And in further answer thereto alleges that he made the statement in said first article referred to in good faith, and that at the time of making and filing the same this respondent believed it to be a true and accurate account of the moneys received and paid out for his election expenses, and it was not intended by him to be false, or an evasion of, or in violation of, the statutes of the State.

Second.— In answer to the second article of impeachment, this respondent admits that he is now the Governor of the State, having been elected thereto on the 5th day of November, 1912, as in said second article set forth, and that he filed a statement purporting to be a statement of all the moneys received, contributed or expended by him, as candidate for the office of Governor, as set forth in said second article; but denies each and every other allegation, matter and fact therein contained and set forth.

And this respondent, further answering the said second article of impeachment, alleges that he made the statement in good faith and that at the time of the making and swearing to the same he believes it to be a true and accurate statement, and that the same was not intended by him to be false or an evasion of, or in violation of, the statutes of the State.

Third.— In answer to the third article of impeachment he admits that at the time therein alleged and set forth, he was, and now is the Governor of the State of New York, and denies each and every other allegation, matter and fact in said third article set forth and contained.

Fourth.— In answer to the fourth article of impeachment, he admits that at the time alleged and set forth he was the Governor of the State of New York; and denies each and every other allegation, matter and fact in said fourth article set forth and contained.

Fifth.— In answer to the fifth article of impeachment, he admits that at the time alleged and set forth, he was, and now is the

Governor of the State of New York; and denies each and every other allegation, matter and fact in said fifth article set forth and contained.

Sixth.— In answer to the sixth article of impeachment this respondent admits that he now is the Governor of the State of New York; that he was regularly nominated by the Democratic party therefor, and thereafter elected to such office, as alleged and set forth in said sixth article; but denies each and every other allegation, matter and fact therein contained and set forth.

Seventh.— In answer to the seventh article of impeachment he admits that at the time alleged and set forth, he was and now is the Governor of the State of New York; and denies each and every other allegation, matter and fact in said seventh article set forth and contained.

Eighth.— In answer to the eighth article of impeachment he admits that at the time alleged and set forth he was and now is the Governor of the State of New York; and denies each and every other allegation, matter and fact in said eighth article contained.

WHEREFORE this respondent asks that said articles of impeachment against him be dismissed.

(Signed) WILLIAM SULZER.

The President.— Call your witnesses, gentlemen.

Mr. Brackett.— The opening of the case; the opening first of counsel on each side, following the rules of the Supreme Court.

The President.— Yes.

Mr. Richards.— Presiding Judge and Members of the Court of High Impeachment.

Mr. Herrick.— Mr. President, I am informed — I was engaged at the time — that there was some announcement made that both sides were to open at this time.

The President.— No, I don't understand so.

Mr. Parker.— That was the point made by Senator Brackett, that under the rules, under Rule 29, there is an opening first on the part of the Managers and then on the part of the defense.

Mr. Fox.— Rules of what?

Mr. Parker.— Of the Supreme Court.

The President.— It had escaped the attention of the Presiding Judge.

Mr. Brackett.— Rule 29 of the Supreme Court, not of these rules. These rules adopted the rules of the Supreme Court. Rule 29 of the Supreme Court provides that counsel for the plaintiff shall open first, and then counsel for the defense.

Mr. Herrick.— That applies, as I understand, only to civil cases, and not a criminal proceeding at all, an impeachment proceeding.

The President.— We will hear this gentleman first, and dispose of it afterwards.

Mr. Richards.— Presiding Judge and Members of the High Court of Impeachment. The technical objections and so-called constitutional questions have either been swept aside or reserved for further consideration by the court, and the question now is upon the merits as to whether William Sulzer is guilty or not guilty on certain offenses charged in the articles of impeachment, and it now becomes my duty to outline briefly the facts in support of the articles charging the defendant, or respondent, with wilful and corrupt misconduct in office, and with high crimes and misdemeanors. High crimes and misdemeanors! High the office of William Sulzer, but low, we claim, are the crimes or offenses which are charged against him, and which we shall show. Plain offenses, termed by the law as fraud, larceny, and perjury, the chief elements of the articles of impeachment. The Election Law of this State has shown a well defined policy whereby the law takes hold of a candidate for Governor from the moment of his nomination and requires a compliance by him as Governor-elect, if he is elected, before he can take the oath of office and act as Governor.

The law provides in substance that $10,000 is the limit which a candidate for Governor can expend, and that after election he, as Governor-elect, shall make and file a statement over his own signature, backed by his oath, as to the financing of his campaign,

and this, we contend, is in the nature of a condition precedent to his taking office as Governor.

The law provides that a candidate within a certain period after election, shall file such verified statement, setting forth all receipts, expenditures, disbursements and liabilities made or incurred by him as a candidate, including the amount received, the name of the person from whom received, the date of its receipt and amount of every expenditure or disbursement exceeding $5, the name of the person or committee to whom it was made, with the date thereof, and all contributions made by such candidate.

The purpose of those provisions is clear, is known to all men, and we say known to all men in political life, and therefore well known to the respondent, to prevent the corrupt receipt of money, and the receipt of corrupt money; to prevent corrupt expenditure; to limit the amount which a candidate may expend, and therefore by implication to limit the amount which the candidate may receive. Its progressive policy has been to let the people of the State know whether there are any strings to a candidate, who his backers are. In other words, that the electors of the State may know whether or not under the guise of campaign contributions money is paid to a candidate to influence later official action. In other words, that when a man takes office his official acts can be scrutinized, weighed and judged in the light of the interests, political or financial that were behind him during his campaign.

With these provisions in force, what did William Sulzer, the respondent, do? He was nominated on October 2, 1912, and we propose to show that almost immediately thereafter he began to solicit and obtain large sums of money for campaign purposes.

We shall show that he was busier in getting money and in trying to get it then he was in getting votes. He went at his campaign for money with system, with cool deliberation and cunning schemes to conceal what he got. Five days after he was nominated he made a public statement that he would have no financial managers or campaign collectors, yet at that moment his private secretary was running a secret campaign account, and the respondent already had working for him collectors scouring the city and State for contributions. We expect to show that he first preferred currency, which has no ear marks, and next checks

to bearer or cash; next checks to the order of someone other than himself, and last checks to his own order, if the others were not possible.

He had more than one bagman, to use an expression which I believe the respondent is fond of. He had a bag himself which was as open to a $10,000 contribution as to a $2 one. We shall prove to the satisfaction of this Court we believe instances of his request that checks should be made to the order of someone other than himself; that he preferred cash to the checks, and that when some of his collectors came in with checks he asked them in the future to cash those checks and bring him the cash.

He did more than collect and keep these funds. He intended to keep them. He had no thought of returning them to the contributors, for it will clearly appear that he used and intended to use these contributions in the purchase of stocks and for margins on stock transactions. The respondent had many ways of getting money, and many ways of concealing it.

He had first the account of Louis A. Sarecky in the Mutual Alliance Trust Company, Sarecky, his private secretary. There was a personal account of the respondent in the Farmers' Loan & Trust Company. There was a speculative account on margins in the brokerage house of Harris & Fuller. There was also a stock account or a transaction account in the office of Boyer, Griswold & Company, brokers, and another in the office of another brokerage firm, Fuller & Gray, also brokers.

During the period of October and November, 1912, we shall show that into and out of the Sarecky account went practically $12,000, $7,000 more than the respondent reported.

We shall show that into the Farmers Loan and Trust Company account went over $15,000 more.

We shall show that into the account of Harris & Fuller went $10,000. To Boyer & Griswold went $12,025, and to Fuller & Gray went $17,337.50. The documentary evidence in this case will show that of these amounts $40,000 was in cash.

We shall show beyond peradventure the respondent's knowledge of and participation in the receipt and deposits of these moneys, not only by transactions and conversations with the witnesses who are disinterested, but by his own signature to deposit slips and checks.

When evidence of these charges first became public, the respondent claimed that when they were made he was away campaigning, and that the contributions were paid to committees or agents, and for the purpose of demonstrating the falsity of that claim in advance, I am going to briefly state the facts with regard to the whereabouts of the respondent and to his knowledge of the transactions in question.

On October 4, 1912, after his nomination, the respondent returned from Syracuse to New York City where he remained uninterruptedly until October 17, 1912, thirteen days, and during that period of thirteen days his collections in cash and checks deposited with the firms and the banks that I have described, amounted to over $27,000.

On October 5th, a check for $500 was sent him by Mr. Abram I. Elkus, and on that same day another one for $1,000 was handed him by Henry Morganthau, both of which were personally endorsed by him and deposited in the Farmers' Loan & Trust Company with a slip filled out in his own handwriting. On October 9th, a check was sent by William F. McCombs for $500, which check was deposited in the Sarecky account. On October 10th, the day he appeared at the National Democratic Club and accepted the nomination for Governor, he afterwards visited the Manhattan Club, and he got many checks, some from members of the latter club. On that date he got from John Lynn, $500; Lyman A. Spalding, $100; Theodore W. Myers, $1,000; E. C. Benedict, $250, and many others, whom I shall not now name.

He showed fine discrimination as to the disposition of these checks of October 10th. Some were deposited by Sarecky and reported in the statement; some were deposited by Sarecky and not reported; and others were used by the respondent to purchase Big Four stock from the firm of Boyer, Griswold & Company, six days later.

On October 14th he received a check from Jacob H. Schiff for $2,500 to the order of Sarecky.

Across the corner of the check is written, "Mr. Schiff's contribution to Wm. Sulzer's campaign expenses," placed there by Mr. Schiff just before it was delivered to the Investigating Committee, as a voluntary statement by Mr. Schiff of the purpose of the check, in lieu of testifying before that committee.

On October 16th, when the respondent was still in the city, came the first transaction in Big Four stock during the campaign, when $12,025 was paid for 200 shares.

$7,125 in cash, the following checks:

Theodore W. Myers	$1,000
John Lynn	500
L. A. Spalding	100
E. F. O'Dwyer	100
John W. Coe	300
Frank V. Strauss Co.	1,000
John T. Dooling	1,000
Aggregating	$4,000

and a check of William Sulzer for $900 to make the exact amount, were used by his friend Frederick L. Colwell to buy these 200 shares, a stock in which Sulzer had long been interested.

The checks were all certified, and the check of the respondent for $900 was charged to his account in the Farmers Loan & Trust Company on the date in question. On October 16th, after banking hours, there was handed to the respondent in his office a check for $2,000 to the order of cash by a friend who will testify, and I will refer to this check later.

On October 18th and 19th, the respondent went on a short trip up the Hudson as far as Troy, and returned. On Sunday, October 20th, he spent at his home, 175 Second avenue, New York city, and Frederick L. Colwell was a visitor. The following day, October 21st, Colwell began to purchase more Big Four stock, this time under the guise of account No. 500, from Fuller & Gray, with whom he had desk room. Our evidence will show that this, too, was Sulzer's account.

From October 21st to October 30 inclusive, the respondent took a long trip up-State, returning to New York city in the early evening of October 30th, and it is interesting to note the evidence from Fuller & Gray's books as to the dates of payment in currency to Fuller & Gray. With the exception of two comparatively small payments, the first 200 shares of Big Four stock were bought

with cash furnished on October 31st, the day after the defendant returned to New York city, and we find on the back of the $2,000 check I have just mentioned the endorsement of Frederick L. Colwell when he turned it into cash — the same check received by the respondent at his office after banking hours on the 16th day of October. The total cash paid for these 200 shares was $11,825.

On November 4th, the day before election, account No. 500 shows 100 more shares of Big Four stock, paid for on November 6th, the day after election, with $5,512.50 in cash.

We come now to the secrecy surrounding the delivery of the Big Four stock purchased on account No. 500. Colwell had desk room in the New York office of Fuller & Gray. Fuller & Gray had two other offices, one in Brooklyn and one in Yonkers; and when the stock was ready to be delivered the Brooklyn office was telephoned to by the New York office to be ready to make delivery at 3:15 P. M. The Brooklyn office then sent a messenger to get the stock from Harris & Fuller in New York. The Brooklyn office then telephoned Coe, a clerk in the Yonkers office. Coe from the Yonkers office was ordered to go to Brooklyn, and he delivered the stock neither in the New York office nor in the Brooklyn office, but to Colwell at the National Nassau Bank, a block away from the Brooklyn office. The only record of this delivery was a receipt from Coe — none from Colwell.

Meanwhile, on November 6th, the time had come upon the respondent to make his statement required by him as governor-elect. I am not going to read the details of that statement, but I just want to call again the court's attention to the language of the oath:

> "State of New York, City and County of New York, ss.: William Sulzer, being duly sworn, says, that he is the person who signed the foregoing statement; that said statement is in all respects true, and that the same is a full and detailed statement of all moneys received, contributed or expended by him, directly or indirectly, by himself or through any other person in aid of his election. Signed, William Sulzer. Sworn to before me this 13th day of November, 1912.
>
> ALFRED J. WOLF,
>
> *Commissioner of Deeds, No. 72, New York City.*"

And that statement, to which the oath was attached, showed that he reported 68 comparatively small contributors, only one of $500, and none over $500, and aggregating $5,460, and no more. And in reporting those 68 contributors, while the 68 are estimable men, fairly well known to some of the citizens of the State, there was not a name on the list that would carry meaning to any elector that might read that statement for the purpose of knowing who had been his financial supporters in the campaign. There is no report of any contribution from either Mr. Jacob H. Schiff, or Mr. E. C. Benedict, or from the banker Myers, or from Mr. Morgenthau, or from Mr. McCombs, nor from wealthy men identified with the brewing and liquor interests. And we shall ask the court to infer, when our proof is given, without reference to the question of actual knowledge, that the omission of the names of distinguished and powerful men from that list was not by accident, but by design.

In connection with this branch of the charges presented by the Assembly, although taken up in articles III, IV and V, I desire to outline briefly the efforts made by the respondent while Governor, to prevent the revelation of the misuse of the funds which we say will be indicated by this evidence. His secretary, Sarecky, refused to answer questions before the joint legislative committee, unless represented by counsel, one of those counsel who sits at the respondent's table; and we expect to show why and how Sarecky's refusal was obtained.

It will also appear that in case of other contributors, the respondent asked them to refuse to testify as to their contributions, and asked them to conceal the fact of their contributions.

As to Colwell, we shall show that when he was first subpoenaed before the Legislative Investigating Committee, he appeared but refused to answer; that when subpoenaed for a later hearing, he did not appear at all. And we shall present evidence that the respondent on the date of the last hearing, August 8, 1913, got into communication with Mr. Colwell with the result that Colwell telephoned to his home to have his bag packed and to be met with that bag on the north-bound station at Yonkers; that Colwell boarded that station at Yonkers — boarded the train at that station at Yonkers on his way north; that he has never been seen in his home or in his office and although we have for weeks diligently

sought him he cannot be found by us either in this State or elsewhere.

As to the articles charging corrupt use of the power of veto. I now take up for consideration the offenses charged in article VII, the corrupt bargaining by the respondent in office as Governor of his power as Governor.

We shall show that he punished legislators who opposed him by vetoing legislation enacted for the public welfare, and traded executive approval of bills for votes for his direct primary measure, in which he had a personal political interest.

Assemblyman Sweet, of Oswego, had passed by both Houses of the Legislature a bill providing for the construction of a bridge at Minetto in Oswego county, to take the place of a bridge that had been torn down or removed by reason of the construction of the Barge canal. It was a bridge which required, as the evidence shows — will show, by the demands of the neighborhood. It had the written approval before the Governor of the Superintendent of Public Works. It was approved by the Department of Efficiency and Economy, to whom the Governor had left it — the question of its approval. And when Assemblyman Sweet told the Governor that he was there in the interest of that bill, the respondent replied:

"Assemblyman, how did you vote on my primary bill?"

When the Assemblyman replied, "I voted against it," the respondent said, "How are you going to vote in extra session?" The Assemblyman replied, "I am going to vote the sentiment and in the interest of the district."

The respondent, the Governor, then said to him to see Mr. Valentine Taylor, his personal counsel, and smooth him the right way, "and bring your bill to me, and remember, Assemblyman, I take good care of my friends."

Assemblyman Sweet did not evince any desire or intention on his part of voting for the Direct Primary measure, and Assemblyman Sweet's bill was vetoed.

In another case, involving the expenditure of $190,000 from the general funds of the State for a highway in the county of Greene, the evidence will show and will tend to prove that the respondent as Governor traded his approval of this measure for

a change in Assemblyman Patrie's vote from one against the Governor's bill to a vote in its favor.

The President.— You may suspend now, the hour for adjournment having arrived. Crier, close Court.

The Crier.— Hear ye, hear ye, this Court will now take a recess until 2 o'clock this afternoon.

Thereupon, at 12:30 o'clock P. M., the Court took a recess until 2 P. M.

AFTERNOON SESSION, 2 O'CLOCK P. M.

The President.— Call the roll, Mr. Clerk.

The Clerk thereupon called the roll and found a quorum to be present with the following absentees:

Senator Brown.
Senator Carswell.
Senator Frawley.
Judge Gray.
Senator McClelland.
Senator Murtaugh.
Senator Palmer.
Senator Sanner.
Senator Wagner.
Senator Walters.

The President.— Crier, open Court.

The Crier.— Hear ye, hear ye, this Court now resumes its session from recess.

The President.— Now, Mr. Richards, if you please.

Mr. Richards.— At the recess I was speaking of the evidence with regard to a certain bargaining of votes in the matter of the Catskill or Greene highway.

In another case — and I will just repeat the last sentence so as to get the connection — in another case involving the expenditure of $190,000 from the general funds of the State for a highway in the county of Greene, the evidence will tend to prove that

the Respondent, as Governor, traded his approval of this measure for a change in Assemblyman Patric's vote from one against the Governor's bill to a vote in its favor. From the evidence as to conversation leading up to the ultimate signing of the bill and the voting by Assemblyman Patric for the Governor's measure, taken into consideration with the fact that the Highway Department in a written report opposed the approval of the bill, no one can escape the inference that the Governor was willing to, and did approve of the expenditure of $190,000 of the taxpayers' money in consideration for a single vote on his primary bill.

In another instance we will show that of a highway in the counties of Essex and Warren, where in a practically similar situation, the respondent, as Governor, after having told Assemblyman Prime of Essex that his motto was: "You for me, and me for you," approved the highway measure and Assemblyman Prime, who had not voted at all at the regular session of the Legislature, voted at the extraordinary session in favor of the Governor's bill.

As to Article VIII, what I have said in relation to his dealings on Wall street indicate in a small measure the extent to which he was personally interested in the rise and fall of securities on the Stock Exchange. We expect to show that he continued to speculate in stocks after he became Governor and that while so interested he caused to be introduced into the Legislature and advocated the adoption of legislation vitally affecting the rise and fall of securities on said Exchange, and we shall leave it to this Court to say whether his act as Governor in fathering such legislation was not influenced by his personal interest in the fluctuation of securities affected by that very legislation.

The Public Interest Requires His Removal.

May it please the Court, it is not my duty as counsel in opening the case to argue the effect or force of the evidence to be adduced, but I am confident that when this Court has heard the witnesses and has seen the documentary proof to sustain the charges against the respondent, this Court cannot escape the conclusion that William Sulzer has been guilty of wilful and corrupt misconduct in office and of high crimes and misdemeanors, and that his remaining in the high office which he holds would be a menace to, and subversive of the best interests of the people of this State.

The President.— I understand the counsel wish to address the Court as to the question of the respondent's opening.

Mr. Stanchfield.— We desire to be heard if the presiding judge please. The Board of Managers take the position here and now with reference to the procedure governing this body, that the rules which we have adopted are controlling; in other words, to plagiarize a remark of counsel on the other side, the world has moved since many of the present members of the Court of Appeals entered that tribunal, and the rules of the Supreme Court under which this trial is being conducted prescribe as follows:

> "In the trial of civil causes unless the justice presiding or the referee shall otherwise direct, each party shall open his case before any evidence is introduced, and except by special permission of the Court no other opening by either party shall thereafter be permitted."

The reason that actuates the Board of Managers in taking this position is two-fold in its character, first, literally speaking, it is in accordance with the rules that govern this trial; in the second place, it would very materially tend to expedite this trial. That argument is offered in the interest of time. It is needless to add to it other than to say that if a succinct and terse outline were here presented of the contention upon the facts which the respondent desired to interpose upon this trial, it would most materially abbreviate it. We challenge emphatically the proposition that this is a criminal trial. We take the position, and insist upon it, that it is an action to expel the respondent from the office which he now holds, a civil proceeding to detach him from political life, clothed and surrounded by the rules and presumptions that obtain in civil causes, and in no other. That position was advanced — I will not take your time to go into it in detail — in the Johnson trial, to which your attention has been called, and I am using almost the exact language of both Mr. Sumner and Story in his work upon constitutional law, when I make the statement that it is practically a proceeding of ouster. We contend further that the rules with reference to the quantum of evidence necessary to render a verdict of guilty in this case

are controlled by the principles that environ and surround the trial of civil causes, and that we are required to produce here to convince the mind of this tribunal simply a fair preponderance of evidence and no more.

The President.— Mr. Stanchfield, I doubt very much the wisdom of entering upon a discussion of such a broad question on simply such a minor matter as the question of whether the opening of counsel for respondent shall be made now or later.

Mr. Stanchfield.— The reason for adducing this argument as we see it, at this time, is to show the imperative necessity to enforce the rule adopted by this Court. In other words, this: We have the right to use the argument in our summary of this case, assuming for the purpose of it, that the respondent does not take the witness stand; and it is with all those reasons in view, the degree of evidence, the right to comment upon his failure to take the stand, that this question, I repeat, from the standpoint of the Board of Managers is of sufficient importance to require, in the opinion of collective counsel this statement.

The President.— As appears by the vote that was taken before recess, the desire of the majority of the Court is to reserve the questions that enter into the merits of the case and form large and important factors. We should not while ruling commit ourselves to the question whether it is necessary to prove this case beyond a reasonable doubt, or by a mere preponderance of proof, or the other question whether the absence of the party from the State, if he should be absent, cannot be commented on to his disadvantage.

But the presiding judge still thinks that those questions should be left to the final submission of the cause and not on a question of this kind, which, though having a bearing, compared to the great importance of the issue which we are to pass on, is comparatively a small matter.

Mr. Stanchfield.— I don't know, if the presiding judge please, whether I made myself clear or not. I was adducing these different reasons as an argument why the rules should be enforced that the respondent should be compelled at this time to open his case.

The President.— Well, it is within the discretion of the Court to change the rule or to give permission to go back to the old laws, even if this is to be considered as a strictly civil case. The notion of the judge presiding is that in this case it will be a great deal wiser to follow the old practice, and avoid at this time any discussion of the question of the necessity or the quantity of proof that is requisite to prove the offenses as charged, or any questions that enter into the merits of the case. That ought to be determined, it seems to him, only on the final submission. Therefore, he thinks that it is wiser that the respondent's counsel may reserve their opening until they open their case.

Mr. Kresel.— Shall we call our witnesses?

The President.— If no member of the Court challenges, that will be the disposition, and you may call your witnesses.

Mr. Kresel.— The Secretary of State.

The President.— Do you swear?

The Witness.— Yes.

The Clerk.— Mr. Secretary of State, you do solemnly swear that the evidence which you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer, as Governor of this State shall be the truth, the whole truth and nothing but the truth, so help you God.

The Witness.— I do.

MITCHELL MAY, a witness called in behalf of the Managers, having been first duly sworn, in accordance with the foregoing oath, testified as follows:

The President.— The question is in what position counsel examining witnesses had better stand, so that all members of the Court shall hear the questions of counsel, and the witness' answers. The further you are away from the witness the louder he will answer to you, and the more easily will the members of the Court hear.

Mr. Kresel.— Does your Honor think it would be preferable to have the witness' chair down here (indicating space below rostrom)?

The President.— Then you would deprive the judge presiding of the opportunity to hear.

Judge Werner.— I would suggest, Mr. President, that counsel examining stand in relatively the same position on that side that the witness sits on this side, thus facing the majority of the Court.

The President.— Do so, if there is no objection, and we will see how that will work out.

Mr. Marshall.— Don't you think it would be better to get right up here inside of the rail?

The President.— No, that would be too close to the witness.

Direct examination by Mr. Kresel:

Q. Now, Mr. May, are you the Secretary of State of the State of New York? A. I am.

Q. And have you been such since the first of January, 1913? A. I have.

Q. Have you produced, in obedience to a subpoena, the original record of the nomination of William Sulzer as Governor of the State by the Democratic party, which is on file in your office? A. I have.

Q. Will you produce it, please? A. (Witness produces paper).

Mr. Kresel.— I offer in evidence, if the Court please, this original certificate made by the presiding officer of the convention of the Democratic Party, held at the city of Syracuse, on the 1st day of October, 1912, certifying, among other things, that William Sulzer was nominated by that convention for the office of Governor of the State of New York.

The President.— If there is no objection it will be admitted.

Mr. Kresel.— Now, right here, may I ask the Presiding Judge, whether it is necessary to mark the original document?

The President.— I suppose it ought to be, but it does seem to the Presiding Judge, that counsel might make admissions as to facts that are not disputed, and get to the real marrow of the case.

Mr. Fox.— It was for that purpose, may it please the Court, that I rose rather precipitately in order that we might be saved this sort of thing, and I have no doubt whatever that Mr. Stanchfield and myself can agree to save a lot of time. If the learned counsel will ask me what they would like to have us admit in the way of preliminary proof, I am quite willing to admit whatever we can.

Mr. Kresel.— Let us take this first. It is admitted, I understand, on behalf of the respondent, that he was the regular candidate of the Democratic Party for the office of Governor of the State of New York, having been nominated for such office at the convention of the Democratic Party held at the city of Syracuse on the 1st day of October, 1912.

Mr. Fox.— That is admitted, as I understand it in the answer.

Mr. Kresel.—And that he continued such candidate of such party until the 5th day of November, 1912, when he was elected Governor of the State of New York?

Mr. Marshall.— We concede that he was nominated at the Convention beginning on the 1st day of October, 1912, and that he was in fact nominated on October 3, 1912, at that Convention.

The President.—And he never declined the nomination.

Mr. Marshall.— That he accepted the nomination and was duly elected at the election held in November, 1912, and on the 1st day of January, 1913, took his official oath of office and entered upon the performance of his duties as Governor of the State of New York.

Mr. Stanchfield.—And that he has not resigned?

Mr. Marshall.—And that he has never resigned.

Mr. Kresel.— Will it also be conceded that the respondent, William Sulzer, has acted as Governor since the 1st day of January, 1913, and until the 13th day of August, 1913?

Mr. Marshall.— It is so admitted.

By Mr. Kresel:

Q. Now, Mr. Secretary, have you produced the original oath of office signed and taken by William Sulzer upon his induction into the office of Governor? A. I have.

Mr. Marshall.— We have admitted it.

Mr. Kresel.— I know, but I want to offer the original oath in evidence. May that be marked?

Mr. Marshall.— We have already conceded the fact. It seems unnecessary to lumber the record.

The President.— The Chair does not understand why it is insisted on but that will have to be left to counsel, only expressing the wish that time shall not be consumed on unnecessary matters that nobody denies.

Mr. Kresel.— We understand.

(The oath of office offered in evidence was received in evidence and marked as Exhibit M–1.)

Q. Mr. May, was this original oath which is now marked Exhibit M-1 signed by William Sulzer in your presence? A. It was.

Q. And you swore him to it? A. I did.

Q. As Secretary of State? A. I did.

The President.—Any cross-examination?

Mr. Marshall.— No cross-examination.

Mr. Kresel.— Now, the Clerk of the Assembly.

The Clerk.— Mr. Clerk of the Assembly, you do solemnly swear that the evidence which you shall give upon this hearing upon certain articles of impeachment preferred against William

Sulzer, as Governor of this State, shall be the truth, the whole truth and nothing but the truth, so help you God?

The Witness.— I do.

George R. Van Namee, a witness called in behalf of the Managers, having been first duly sworn, in accordance with the foregoing oath, testified as follows:

Direct-examination by Mr. Kresel:

Q. Mr. Van Namee, are you the Clerk of the Assembly of the State of New York? A. I am.

Q. And were you such during the month of August, 1913? A. I was.

Q. Have you produced the original Journal of the Assembly for the legislative days of August 11th and August 12th, 1913? A. I have.

Q. Will you let me have the one of August 11th? (Witness produces journal.)

Q. I don't find, Mr. Van Namee, in what you have produced the report of what was known as the Frawley Committee. Have you that? A. Yes, as indicated there (indicating).

Q. Will you point that out, please? A. "Mr. Yard from the Joint Legislative Investigating Committee submitted the following report, Appendix 27."

Q. On the 11th of August, 1912, did Assemblyman Yard from the Joint Legislative Investigating Committee present a certain report? A. He did.

Q. Was that report adopted by the Assembly?

Mr. Marshall.— I object to that as immaterial.

Mr. Kresel.— It is only introductory. I do not propose to offer the report, I simply want to connect it with a resolution subsequently offered and adopted.

Mr. Marshall.— I don't wish to make any technical objections. I demand they shall merely lay a foundation.

Q. What is the answer? A. It was.

Q. Subsequent to the adoption of that report, did Assemblyman Levy offer a certain resolution? A. He did.

Q. Is this the resolution which I now offer you show you from your Journal, the resolution that you are speaking of? A. That is the original resolution.

Q. And that was offered on the 11th of August? A. Yes, sir.

Mr. Kresel.— I now offer the resolution of impeachment offered by Assemblyman Levy and adopted by the Assembly.

Mr. Marshall.— No objection.

Mr. Kresel.— I desire to read this resolution.

"Mr. Levy offered for the consideration of the House a resolution in words following:

"WHEREAS, the joint Legislative Investigating Committee has filed a report in the Assembly on the 11th day of August, 1913, together with testimony annexed thereto, showing or tending to show that William Sulzer, Governor of the State of New York, made a false and fraudulent report to the Secretary of State, under his oath, as required by law, that the total contributions in aid of his campaign as candidate for the office of Governor were $5,460 and no more, and, whereas, in truth and in fact the amount was greatly in excess of said sum to the personal knowledge of said Sulzer; and such report further showing or tending to show, that he converted to his own private use, contributions given in aid of his said election for the purchase of securities or other private uses; that he engaged in stock market speculations at a time when he was Governor and vigorously pressing legislation against the New York Stock Exchange which would affect the business of and prices on the Exchange; that he used the power of his office as Governor to suppress and withhold the truth, to prevent the production of evidence in relation to the investigation of campaign contributions and violations of the law in respect thereto, by ordering and directing witnesses some of whom were employees of the State to act in contempt of the joint Legislative Investigating Committee, and that further he used his office as Governor in rewarding or attempting to reward such witness or witnesses by securing or influencing their appointment or promotion in

the State government; that as Governor, the said William Sulzer has punished legislators who disagreed or differed with him in legislation enacted in the public interests and public welfare, and has traded executive approval of bills for support of his direct primary and other measures in which he was personally interested; that as Governor, he wilfully and corruptly made false public statements advising and directing citizens to suppress evidence in reference to his unlawful use of contributions made to him for campaign purposes, and whereas he has otherwise corruptly and unlawfully acted or omitted to act,

"Therefore, be it resolved that William Sulzer, Governor of the State of New York be and hereby is impeached for wilful and corrupt conduct in office and for high crimes and misdemeanors."

(The resolution offered in evidence was received in evidence and marked Managers' Exhibit M-2.)

Q. Mr. Van Namee, was this resolution of Assemblyman Levy put to a vote in the Assembly? A. It was.

Q. And was it adopted? A. It was.

Q. How many votes were recorded in favor of the resolution? A. I will have to refer to the Journal.

Q. I think you will find it on the next day? A. Affirmative, 64; negative 30.

Q. No, you will find the vote on the resolution the following day. That one you just gave us was on a different matter? A. I believe I have not the Journal here that has the morning session of the 12th.

Mr. Kresel.— The witness says he has omitted to bring that section of the journal.

The President.— Let the witness stand aside until he gets that. You can call another witness.

Mr. Kresel.— Mr. Secretary of State, I desire to call you for a minute.

MITCHELL MAY, recalled:

By Mr. Kresel:

Q. Have you produced Mr. Secretary, the original statement of compaign receipts and expenditures filed in the office of Secretary of State by William Sulzer who was a candidate for Governor? A. I have.

Q. May I have it please? A. Yes. (Witness produces same.)

Mr. Kresel.— With the Court's permission I will offer in evidence this original statement.

The President.— Show it to your opponents.

Mr. Marshall.— There is no objection. I say there is no objection. I do wish to reserve the question as to the materiality and competency of any proof which relates to this oath or to this affidavit on the grounds which we urged so fully this morning and yesterday with regard to the motion to strike out Articles 1, 2 and 6.

The President.— That is returning to the very questions we have reserved.

Mr. Marshall.— We have no further objection than that.

The Court.— I will make the ruling now that all rights as to these points are reserved, except formal objections.

(The original statement of campaign receipts and expenditures was offered in evidence and received and marked M-3.)

Mr. Marshall.— In order to avoid a repetition of any objection of this same character hereafter, I wish to have it understood that we reserve generally our objection to all testimony which bears upon this affidavit or any of the matters which are therein referred to, or which are made subject to articles I, II and VI of the impeachment articles, and I understand your Honors reserve your decision upon that.

The President.— That will be the decision of the court unless it is challenged by some member.

By Mr. Kresel:

Q. Mr. Secretary, have you made a search in the files of the office of the Secretary of State for any other reports filed by any committees or individuals with reference to the campaign contributions and expenditures in connection with the election of William Sulzer as Governor of the State of New York? A. I have caused such a search to be made.

Q. And have you produced any other statements made by any such political committee or individual with reference to the election of Willam Sulzer as Governor of the State of New York?

Mr. Marshall.— That is objected to as immaterial. We are not bound by what was done or was not done by other people or other committees.

The President.— I do not suppose you are, Mr. Marshall, but can't he show the negative, if that is the fact?

Mr. Kresel.— We feel that we ought to prove that nobody else made any statement or filed any statement, or made any report with regard to the contributions which were made to Mr. Sulzer.

Mr. Marshall.— But it may be proper to show what, if any, reports are on file or are not on file. We are not bound by the conclusion which is to be deduced from the fact that other people did not file any report.

The President.— No, but can he not prove that these expenditures were not covered by any other reports?

Mr. Marshall.— We can show whether or not there is any other report, leaving the question of the materiality to be determined.

The President.— Because while you may be technically correct he can testify he has searched through his office and these are the only reports, and put them in evidence, and then a comparison would show whether there was, and there might possibly be evidence beyond it, but it seems to me it is hardly worth while to go into that. If you are going to claim that this may have been covered, these contributions, the special charges of these articles, may have been covered by other reports, why then

I think the prosecution should be allowed to prove it. If you are not going to make any such claim, then I do not see the necessity —

Mr. Marshall.— My contention, so far as that is concerned, Your Honor, is that we cannot say. We have no knowledge as to whether any other report bearing upon the subject of contributions has ever been filed by anybody in the office. We state, however, in connection with that whether or not that was done is a matter over which we have no control, and with respect to the doing or not doing of which we have no responsibility, and therefore it is incompetent.

The President.— I think you may prove it, but you have got to prove it under the objection, if objection is made, what reports he had.

Mr. Kresel.— I am going to do that.

The President.— But it seems rather a waste of time.

Mr. Kresel.— Will the stenographer repeat the question.

The stenographer thereupon repeated the question as follows:

Q. And have you produced any other statements made by any such political committee or individual with reference to the election of William Sulzer as Governor of the State of New York?

A. I have.

Q. May I have it, please? (Witness passes paper to counsel.)

The President.— Now, the point is, is that the only one?

The Witness.— That is the only one.

The President.— Besides the one that was made by the Governor himself.

The Witness.— Yes, sir.

Mr. Kresel.— I now offer in evidence, if your Honor please, this statement which was filed by the William Sulzer Progressive League of New York, signed by Leon Weinstock, as treasurer, dated November 11, 1912, and filed in the office of the Secretary of State on the 16th of November, 1912. Is there any objection?

Mr. Marshall.— Subject to the same general proposition.

The President.— It will be admitted and marked in evidence.

(The statement which was offered in evidence was received in evidence and marked Exhibit M-4, and will be found at the end of the day's proceedings.)

Judge Werner.— Will you please state the contents of that paper?

Mr. Kresel.— Yes, I intend to. The statement filed by the William Sulzer Progressive League, which is now Managers' Exhibit 4, shows the receipt of $450, and shows expenditures of $451.15. The statement filed by the respondent William Sulzer shows receipts of $4,560, which are items set out in full, giving the date when the contribution was received, the name of the contributor, and amount, totaling $5,460, and shows expenditures, likewise itemized with dates and name and purpose, amounting to $7,724.09.

Judge Bartlett.— Is that the one referred to in the first article?

Mr. Kresel.— That is the one, sir.

Judge Bartlett.— As containing a statement of the contributions by 68?

Mr. Kresel.— 68 contributors.

The President.— Then you want to make the further statement, of course, that the report filed by the respondent covers none of the contributions, or at least none of those contributions here named, that are made the subject of the charges of the articles, nor are they named in the other.

Mr. Kresel.— Exactly.

Mr. Marshall.— We will be able, your Honor, to arrive at a statement which will cover that point without wearying the Court.

The President.— If you find anything, the Court will give you an opportunity to call attention to it.

Mr. Marshall.—We have no objection to that.

Senator Thompson.— Mr. President, may I call the attention of the Court and counsel for the respondent to the fact that when he makes his objection, or whatever he says, we cannot hear him back here.

The President.— Mr. Marshall, when you are making the objection you will have to turn around and make it. It is absolutely necessary, because all the members of the Court should hear what transpires. Thank you, Senator Thompson, for calling the attention of the Presiding Judge to it.

Mr. Kresel.— That is all, Mr. Secretary.

Mr. Marshall.— Just a moment; I would like to ask a few questions.

The President.— You will have to go away over there to be heard.

Mr. Marshall.— I would like to ask a few questions.

The President.— It is not a question of whether it is direct or cross, Mr. Marshall.

Mr. Marshall.— I didn't understand. I will make myself heard.

Cross examination by Mr. Marshall:

Q. Mr. Secretary of State, have you produced all of the reports which relate in any way to the election of the Governor of the State of New York which were filed in the office of the Secretary of State in connection with the election held in November, 1912? A. So far as I know, all have been produced.

Q. Is there any report from the Democratic State Committee filed in the office of the Secretary of State? A. There is.

Q. Have you produced that? A. I have not.

Q. Is there any report there filed by what may be called for brief, briefly, the Democratic County Committee of the county of New York? A. I think there is one on file.

Q. Have you that here? A. I have not.

Q. Are there any other reports connected — which concern the subject of receipt of expenditures or money in connection with

the election of candidates on the Democratic State ticket for the — in November, 1912? A. Are there any other on file?

Q. Besides those which have now been named, namely, the State Committee, the Democratic County Committee and the two reports which have been put in evidence? A. There are reports in the office of those who were elected.

The President.— Then there are reports from every county, are there not?

The Witness.— Yes, your Honor.

Q. Then, you will therefore —

Mr. Marshall.— I won't ask that.

The Witness.— I have only produced those I was subpoenaed to produce.

Q. You were not asked to produce the reports of the Democratic State Committee, the Democratic County Committee of New York, or the Democratic County Committees of any county of the State beside New York? A. I was not.

Mr. Marshall.— That is all.

Mr. Kresel.—That is all. Now, Mr. Van Namee.

Senator Thompson.— Can the members of the Court have access to those exhibits after they are admitted in evidence?

The President.— Certainly.

Mr. Kresel.—We have them right here. Shall we pass them around?

The President.— Yes. If the witness will please remain in possession of these exhibits and produce them any time any member of the Court wants to look at them, that will be satisfactory.

Mr. Marshall.— I would like to ask Mr. May another question.

Mitchell May resumes the stand.

Cross examination continued by Mr. Marshall:

Q. Mr. May, will you kindly state whether or not there was also filed in the Secretary of State's office, in connection with the election of 1912, the statement with regard to receipts and expenditures of money of what is colloquially termed the General Committee of Tammany Hall, or whatever the name of that organization may be? A. I know of no paper of my own personal knowledge being on file under that designation.

Q. You know of such an organization, I mean, by that name?

Mr. Stanchfield.— I object to that as incompetent.

The President.—Well, it is only to get at the report.

Mr. Stanchfield.—There is no report.

The President.—That is what he wants to find out.

Mr. Stanchfield.—That is what the witness says.

Q. Do you mean to be understood as saying that there is no report on file, or you know of no report by such a committee? A. I know of no such report.

Q. But you do know of these other reports that I have referred to? A. I know that they are on file, as called for by law.

Q. Do you know whether there is any report on file which emanates from an organization generally called Tammany Hall? A. I do not.

Q. Have you looked? A. I have not looked.

The President.— Have you any recollection?

The Witness.— That name has not come under my knowledge officially.

The President.— Has it in any manner?

The Witness.— Yes, sir, I know that there is —

The President (interrupting).— Oh, no; but I mean as far as reports are concerned.

The Witness.— No, sir, I know of no such report.

(Witness excused.)

Mr. Kresel.— Mr. Van Namee.

GEORGE R. VAN NAMEE resumes the stand.

Direct examination by Mr. Kresel:

Q. The last question to you, Mr. Van Namee, was to state the vote that was cast in favor and against the resolution impeaching Willim Sulzer? A. Those in favor 79, those opposed, 45.

The president.— Do you hear that question of counsel, and the response of the witness?

A Member of the Court.— Yes, your Honor.

Q. And on that day how many members of the Assembly were there that had been duly elected to that House? A. At present?

Q. No; how many were there, how many members were there of the Assembly, not those present? A. 150.

Mr. Marshall.— Just a moment. The Constitution provides for the number.

The President.— Yes, it is 150. Now, had any died, so far as you knew?

The Witness.— One.

The President.— Who?

The Witness.— Mr. Kennedy, in Queens, resigned.

Mr. Marshall.— My point in regard to that, your Honor, is that there must be a majority of all the members of the Assembly, whether dead or not?

The President.— This is only to get the facts; it is not material.

Q. Now, then, Mr. Van Namee, following the adoption of the resolution of impeachment, was there another resolution offered by Assemblyman Levy to appoint a committee to inform the Senate of the impeachment? A. There was.

Q. And have you that original resolution? I mean in your Journal? A. The next step was the adoption of articles of impeachment, not the presentation to the Senate.

Q. Well, then, we will take that up. Was there a resolution offered for articles of impeachment? A. There was.

Q. And who offered that? A. Mr. Levy, from the select committee appointed to prepare the articles.

Q. Very well, then. Prior to that time there had been a resolution passed appointing a select committee to prepare articles, is that correct? A. There had.

Q. And have you there the original articles of impeachment that were prepared and sent to the House by this select committee? A. I have.

Q. And were these articles of impeachment adopted by a vote of the Assembly? A. They were.

Q. And how many Assemblymen voted in favor of their adoption and how many against? A. In the affirmative 79; in the negative 29.

Mr. Kresel.— With the Presiding Judge's permission I do not propose to read these articles unless I am directed so to do.

The President.— They may be marked in evidence. I suppose they are the same as printed and presented to the court.

Mr. Marshall.— We will so concede.

Mr. Kresel.— May we have them marked, then?

The President.— Have them marked.

(Articles of impeachment offered in evidence received and marked Exhibit M-5.)

Q. Now, were there Managers appointed by the Assembly to prosecute this impeachment? A. There were.

Q. And will you state from the record in your Journal who the Managers were that were appointed? A. The record is as follows: "Mr. Speaker appointed as Managers on the part of the Assembly to conduct the impeachment trial of William Sulzer, Messrs. Levy of New York, McMahon of the Bronx, Greenberg of New York, Gillen of Kings, Ward of New York, Fitzgerald

of Erie, Madden of Westchester, T. K. Smith of Onondaga, and Schnirel of Ontario."

Q. Was there subsequently to that a resolution adopted by the Assembly defining the powers and the duties of the Managers? A. There was.

Q. Will you read that resolution please? Just point it out to me and maybe you won't have to read it.

Mr. Marshall.— I don't object to it.

Mr. Kresel.— I will let you see it.

Mr. Marshall.— I don't ask to see it; you need not show it to me.

The Witness.— (Indicating). That is the one right there.

Mr. Kresel.— I offer in evidence a resolution offered by Mr. Levy and adopted by the Assembly on the 12th day of August, 1913, with regard to the powers of the Management of the Impeachment. You say there is no question about that?

Mr. Marshall.—No.

(Resolution offered in evidence received and marked Exhibit M-6.)

Mr. Kresel.— That is all.

Cross-examination by Mr. Marshall:

Q. At what time on August 11th, 1913, did the Assembly convene?

Mr. Kresel.— I submit, if your honor please, that that is immaterial.

The President.— Possibly it is, but the question has been raised and it is not the intention of the Presiding Judge unless directed otherwise by the Court to rule out any evidence that the parties lay any stress on unless it is something plainly immaterial or bringing in the names or acts of persons who are not parties to the litigation and have no business to be introduced.

A. 8.30 P. M. on Monday, August 11th.

Q. When before that had the Assembly been in session? A. I cannot tell you of my own knowledge.

Q. Was it not on or about the 23rd of July, 1913? A. Yes, I think so.

Q. You say that Mr. Yard presented a report of an investigating committee? A. Yes, sir.

Q. Have you that report before you? A. I have, sir.

Q. Was that report for the first time presented at the meeting of the Assembly on August 11th, 1913? A. Yes.

Q. Was it printed? A. It was.

Q. And was it in the form of the document which you hold? A. It was, and a copy on the desk of each member of the Assembly.

Q. How many printed pages did that report embody? A. 131.

Q. Was that the entire report that was presented at that time? A. That was the report presented by the Investigating Committee.

Q. Had the Investigating Committee taken evidence other than that which is submitted in the report? A. That is something I have no knowledge of.

The President.— The Court is still inclined to adhere to the declaration made, but is this worth while?

Mr. Marshall.— I want to show the circumstances under which these resolutions were passed.

The President.—What is the relevancy of those circumstances?

Mr. Marshall.—As indicating the method of action, the procedure, the way the vote was taken, the time when these resolutions were passed, the opportunity for debate and discussion and understanding and even of reading the testimony and the report which was followed by the passage of the articles of impeachment.

The Chairman.— How is that material? How can the Court pass intelligently on their procedure which was within their

power and their right? They control their procedure and order of business and the propriety of their action.

Mr. Marshall.— But they have gone into all these steps. They considered every one of these steps material, and these questions which I am putting, which will be very few in number, will indicate the entire situation. In other words, they have given us one part of a photograph and we want to fill out the skeleton so as to have an entire and perfect photograph of that which occurred in the Assembly room, which is covered by these questions. I will not ask any question which does not entirely relate to the questions which were put on direct examination to this witness.

Mr. Marshall.— May I have the last question read by the stenographer?

The stenographer read the last question as follows: "Q. Had the Investigating Committee taken evidence other than that which is printed in that report?"

Mr. Kresel.— To that question I object as entirely immaterial.

The President.— The Presiding Judge will exclude the evidence.

Q. You say that subsequent to the presentation of that report Mr. Levy, of the Assembly, presented a resolution which has been marked Exhibit M-2? A. Yes, sir.

Q. When was that presented; at what time in the evening of August 11, 1913?

Mr. Kresel.— I submit, if Your Honor please, that that is immaterial.

The President.— Exclude it.

Mr. Marshall.— I do not wish to ask questions merely for the purpose of putting them on the record. I merely desire to indicate what the line of investigation is.

Q. When was that resolution of Mr. Levy that you have referred to and which has been introduced in evidence voted upon? A. At a session on August 12, 1913.

Q. Was there a vote taken upon that resolution on August 11, 1913? A. There was not.

Q. At what time on August 12th was a vote taken on that resolution?

Mr. Kresel.— Objected to as immaterial.

The President.— Sustained.

Q. Was it passed on August 12th?

Mr. Kresel.— The witness has already so stated.

The President.— If you really intend to challenge the fact that it was passed then of course the Court will allow you to do it, but if it is merely to go into the question of the propriety of the Assembly's act and what hour they adopted the resolution and with what speed they proceeded this Court does not sit here to pass on the act of the Managers of the Assembly.

Mr. Marshall.— I am not asking it for the purpose of sitting in review upon the manners of another tribunal. It is merely for the purpose of getting the exact fact as to when this resolution was passed.

Q. When was it passed; on what date? A. It was passed at the night session of August 12th.

Q. When did that begin?

Mr. Kresel.— I object to that again.

The President.— Sustained. That is sustained unless counsel intends to make the statement that it was not passed.

Mr. Marshall.— I can only tell that by the —

The President.— The Court has too much regard for counsel to think he would under the guise of asking one question endeavor to get at another point —

Mr. Marshall.— I would not make any statement of that sort, your Honor.

Q. You have stated that the resolution was passed by a vote of 79 to 45? A. Yes, sir.

Mr. Kresel.— 29 wasn't it?

Mr. Marshall.— That was the articles.

The Witness.— That was the articles, 29. The resolution was 79 to 45. The articles had less.

Q. Then there were absent 26 members of the Assembly at that time?

Mr. Kresel.— That is objected to as immaterial.

Mr. Marshall.— That is a matter of calculation.

Mr. Kresel.— Then you don't have to ask the witness.

Q. I want to know who was absent; there were 26 absent at that time?

Mr. Kresel.— I object to that again.

Mr. Marshall.— I think it is a matter of calculation.

The President.— They were either absent or not voting anyhow.

Mr. Marshall.— Of course in connection with this we cannot reserve the right to take evidence in connection with a question which has been now determined; of course I did desire to prove that there were absentees, and also with regard to the giving of notice. I imagine that that matter has now, however, been determined so that I will not prove it.

The President.— There is no provision, is there, for giving notice?

Mr. Marshall.— That of course depends upon the nature of the proceeding. My contention the other day was if it was a legislative act it did not require it but if considered a judicial act notice was necessary.

The President.— It has been disposed of.

Mr. Marshall.— Your Honor's ruling makes it improper for me to press the further questions that I desired to ask. I desired merely to go into the details and show the circumstances under

which these resolutions were passed, the hour of the day or night when they were passed and the circumstances.

Q. Was there any additional report printed by the Assembly which was received on the 12th of August, 1913?

Mr. Kresel.— I object to that as immaterial.

(No ruling.)

A. The only report ever submitted to the Assembly by the Frawley committee was the report submitted on August 11th.

Q. Was there another report submitted on the 12th or a partial report? A. I have no knowledge as to the Frawley committee report. The Assembly received only one report from the Frawley committee.

Q. Was there another document of testimony in connection with the action of the Frawley committee presented or published or printed on the 12th of August, 1913? A. The Assembly received no report.

Q. Was there testimony presented? A. No testimony was presented.

Q. And printed? A. As clerk of the Assembly I only received one report; no other report was ever presented.

Q. I am not asking you about a report now; I am asking you about testimony of the so-called Frawley Committee. Further any testimony in addition to that which is appended to the report which you have referred to in your testimony today was presented or printed subsequent to the 11th of August, 1913? A. The committee may have printed another report but it was not presented.

Mr. Marshall.— Nothing further.

Mr. Kresel.— Mr. McCabe.

The President.— Mr. McCabe, you do solemnly swear that the evidence which you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer, as Governor of this State, shall be the truth, the whole truth and nothing but the truth, so help you God.

The Witness.— I do.

PATRICK E. MCCABE.—A witness called in behalf of the Managers, having been first duly sworn, in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Kresel:

Q. Mr. McCabe, during the month of August, 1913, were you the Clerk of the Senate of the State of New York? A. I was.

Q. Did you keep the Journal of the Senate during that month? A. I did.

Q. As clerk? A. As clerk.

Q. On the 13th of August, 1913, did a committee from the Assembly of the State of New York appear in the Senate chamber, while the Senate was in session, and there acquaint the Senate with the fact that William Sulzer, the Governor of the State, had been impeached by the Assembly? A. It did.

Q. I show you this paper, and ask you whether that is the original Journal of the Senate for August 13, 1913, containing an account of the appearance of this committee and the delivery of the message from the Assembly? A. It is.

The President.—That is unnecessary. They have not objected to your proving it by oral testimony.

Mr. Kresel.—I offer that part of the Journal in evidence. I shall not stop to read it. I just want to have it marked.

(The Journal was offered in evidence, and the part referred to was received in evidence and marked Exhibit M-7.)

Q. On the same day, did the Managers of the Assembly appear and deliver to the President of the Senate articles of impeachment adopted by the Assembly in the impeachment of William Sulzer? A. They did.

Q. And have you there the articles so presented? A. Yes.

Q. Upon the presentation of the articles, did the President of the Senate make any announcement? A. He did.

Q. Will you read that, if you have it in the Journal? A. Yes.

Q. It is very short, three or four lines? A. (Reading) The President announced that the Court of Impeachment would be summoned to meet at the Capitol in the city of Albany on Thursday, September 18, 1913, at 12 o'clock noon.

Q. On the following day, August 14, 1913, did you personally serve upon William Sulzer a copy of the articles of impeachment so delivered by the Assembly to the Senate, together with a summons issued by the President of the Senate? A. I did.

Q. I show you this paper, and ask you whether that is an exact copy of the articles and summons so delivered by you to the Governor? A. It is.

Q. Where did you serve that paper on him? A. In the Executive Chamber.

Q. In the city of Albany? A. Yes; the Capitol in the city of Albany.

Q. On the 14th of August, 1913; is that correct? A. Yes, sir.

Mr. Kresel.— I offer in evidence the copy with proof of service.

(The copy of the articles of impeachment offered in evidence was received in evidence as Exhibit M-8.)

Cross-Examination by Mr. Hinman:

Q. Were you present in the Senate Chamber on the day when these articles of impeachment against this respondent were presented to the Senate? A. I was.

Q. What, if anything, in the way of papers and documents, other than the articles of impeachment themselves, were presented to the Senate on that day? A. I don't recollect.

Q. Do you recall whether or not at the time when these articles of impeachment against this respondent were presented to the Senate, there was presented a printed copy of the report of the so-called Frawley Investigating Committee which had attached to it the printed evidence of testimony which had been taken before that Committee?

Mr. Kresel.— I object to that question as absolutely immaterial.

The President.— How is it material?

Mr. Hinman.—Let me suggest this. These articles of impeachment, as you have noted, are what I would say wide wide open; that is, there are no specifications, no bill of particulars. Now, with this report that was presented on the 11th of August to the Assembly, was a part of the testimony taken before the Frawley Committee. There was, as a matter of fact, and I have seen

further evidence, that that was printed the following day, with testimony of witnesses who were examined before the Frawley Committee in the same way as were witnesses whose evidence appears in the papers attached to the report of the Frawley Committee.

It seems to me that respondent is entitled to have testimony which is printed in pamphlet form on the 12th of August by the Assembly. If it is a part of the record here we are entitled to a copy of it.

The President.— I don't see that it is relevant.

Q. On its presentation to the Senate of articles of impeachment, it is made the duty of the President of the Senate to summon the Senators and members of the Court of Appeals to attend to what might be called a convocation of the Court of Impeachment at a certain date and place, and how is it material at all what took place, except that jurisdiction was conferred on the President of the Senate by the necessary preliminary step, to wit, the presentation to the Senate of the articles of impeachment.

Mr. Hinman.— If your Honor, please, I don't put it on that ground at all. Our position is that in a proceeding of this kind this respondent in this case is entitled, as a party in another case would be entitled, to the papers which are a part of the proceeding. This ought to be an open and fair investigation of the facts, and that testimony was a part of this record, and we are entitled, because of the fact that they were public records, to have exhibited to us the papers exhibited as they were.

The President.— It is excluded.

Mr. Kresel.— I desire to prove that this Court —

Mr. Marshall.— We admit this Court was properly called.

Mr. Kresel.— Mr. Wolf.

The Clerk.— Mr. Wolf, do you solemnly swear that the evidence which you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer, as Gov-

ernor of this State, shall be the truth, the whole truth and nothing but the truth, so help you God.

The Witness.— I do.

ALFRED J. WOLF, a witness called in behalf of the Managers, having been first duly sworn, in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Kresel:

Q. Mr. Wolf, you live in the City of New York? A. I do.

Q. Are you a member of the Bar? A. I am.

Q. Admitted to practice in the courts of record? A. Yes, sir.

Q. Have you an office at 115 Broadway, in the City of New York? A. I have.

Q. Are you associated with the firm of House, Grossman & Vorhaus? A. I am.

Q. And were you associated with that office on the 13th of November, 1912? A. I was.

Q. Do you know William Sulzer, the Governor of the State? A. I do.

Q. Did you know him on the 13th of November, 1912? A. I did.

Q. Had you known him prior to that time? A. I had.

Q. For how long a time? A. Several years.

Q. Did Mr. Sulzer, on the 13th of November, 1912 —

The President.— What has preceded this was merely an introductory. Now, be careful not to ask leading questions.

Q. Did Mr. Sulzer have an office at 115 Broadway on the 13th of November, 1912? A. He did.

Q. And do you know on what floor of that building his office was located? A. Ninth floor.

Q. And was that the same floor on which your office is located? A. Yes sir.

Q. Do you remember meeting Mr. Sulzer on the 13th of November, 1912? A. I do.

Q. Where did you see him? A. In his private office, in his suite.

Q. At 115 Broadway? A. 115 Broadway.

Q. City and County of New York? A. Yes sir.

Q. State to the Court the circumstances which called you to his office? A. One of the clerks in Governor Sulzer's office came in and asked me whether I would step in and take the Governor's affidavit, and I went in.

Q. On the 13th of November, 1912, were you a Commissioner of Deeds in the City of New York? A. I was.

Q. When, prior to that date, had you been appointed such Commissioner of Deeds? A. January, 1911.

Q. And your appointment was for how long? A. Approximately two years.

Q. Now then, pursuant to this message, did you go into the office of William Sulzer? A. I did.

Q. State what happened there? A. I went into Governor Sulzer's private office, and he had a paper which I know now is the affidavit of expenses and subscribed—

Q. Look at this paper, Exhibit M-3, and state whether on the 13th of November, 1912, you saw that paper? A. I did see it.

The President.—You needn't mind about leading, because this is an informal matter.

Mr. Kresel.—May I do that?

The President.—Yes, you can get right to the point.

Q. State what happened when you got into the office of Mr. Sulzer. You say you saw that paper there? A. I did.

Q. What was the conversation? A. The Governor signed the paper.

Q. In your presence? A. In my presence.

Q. You saw him sign it? A. I did. I then asked whether he swore to the contents of the affidavit, and he said he did.

Q. Did you read over the affidavit? A. I did; not word for word, but in general substance.

Q. State what you asked him? A. I asked him did he swear that the statement was true, and a full and detailed statement of the moneys received and contributed, or expended by him directly or indirectly in the campaign.

Q. And what did he say?

Senator Murtaugh.— We cannot hear.

The President.—The stenographer will read the answer.

The stenographer then read the answer as follows: "I asked him did he swear that the statement was true and a full and detailed statement of the moneys received and contributed or expended by him directly or indirectly, in the campaign."

Q. What response did Mr. Sulzer make? A. He said that he did.

Q. Will you say that you saw him sign? A. Yes, sir.

Q. How many times did you see him sign on that paper? A. Twice.

Q. Did he sign the affidavit, and did he also sign the statement? A. He did.

Q. Both in you presence? A. Yes.

Q. And what did you then do? A. I then administered the oath to him.

Q. After administering the oath what did you do? A. Then I signed my name as Commissioner of Deeds, and it appears on the paper.

Q. And is the signature "Alfred J. Wolf," your signature? A. It is.

Mr. Kresel.—That is all.

Cross examination by Mr. Hinman:

Q. What is your age? A. I am 29; I was 29 September.

Q. Where do you live? A. 157 West 119th street, New York City.

Q. How long have you lived in New York City? A. All my life.

Q. How long has it been since you were admitted to the Bar? A. 1905.

Q. In whose office were you at the time you were admitted? A. House, Grossman & Vorhaus.

Q. You say you are associated with that firm, in what capacity? A. Managing attorney.

Q. Is that the title you have, managing attorney for the firm? A. Yes, sir.

Q. Were your duties to manage the business of the firm? A. Yes, sir.

Q. How long have you managed the business of that firm? A. The last five years.

Q. How long had you been a Commissioner of Deeds on November 13, 1912? A. I think that was the middle of my second term; I am not quite positive of that but I believe it was the middle of my second term.

Q. Had you been in the habit, during your entire term as Commissioner of Deeds, of taking acknowledgments and affidavits? A. Yes, sir.

Q. How many affidavits and acknowledgments had you taken during your term or terms as Commissioner of Deeds in the City of New York prior to November 13, 1912? A. I couldn't give the figure.

Q. Is it a matter of very common occurrence? A. Yes.

Q. Taking them frequently and daily? A. Oh, yes, yes.

Q. When were you appointed Commissioner of Deeds the last time preceding November, 1912? A. January, 1911, I believe it was.

Q. Was that appointment in writing? A. Well, none other than the usual card that is sent to a Commissioner to call at the County Clerk's office and sign the oath.

Q. Have you that card? A. I have not.

Q. You looked for it? A. No, I have not.

Q. Have you been to the office of the county clerk to ascertain when that appointment was made? A. No.

Q. Have you investigated or examined at all for the purpose of ascertaining when the appointment was made? A. No, I have not.

Mr. Kresel.— Wait a minute. I object to that unless the counsel will state that he questions the fact that this man was a Commissioner of Deeds on the 13th of November, 1912. I submit that all this is immaterial.

Mr. Hinman.— I will state now, if the counsel wants it and the Court thinks it proper —

Mr. Kresel.— (Interrupting.) Certainly.

The President.— I think you may proceed.

Q. In what way do you fix now and are — and are you able to fix now the date when you were appointed Commissioner of Deeds? A. By the fact that I renewed my commission or made an application for my reappointment on January of this year, and I was reappointed; and I made it because I knew that my former term expired.

Q. Expired at what time? A. About January, 1913; and it being for two years, I then concluded that it must have begun January, 1911.

Q. Have you any recollection now as to the month and year when you were first appointed Commissioner of Deeds? A. None other than I have said.

The President.— He said that was the middle of his second term.

Mr. Hinman.— I know; he has made two statements, if your Honor please, in that respect.

Q. Have you any recollection now as to the month and year when you were first appointed a Commissioner of Deeds in and for the city of New York? A. Only as I have said before; January, 1911, is my recollection.

Q. That was your first term? A. No, the second term.

Q. Wait a minute, if I may be permitted, and follow my question. Have you any recollection now as to the month and year in which you were first appointed a Commissioner of Deeds in and for the city of New York? A. My recollection is January, 1909.

Q. On what do you base that recollection? A. On the fact or opinion that I took this affidavit during my second term and that term was for two years —

Q. (Interrupting.) Is your testimony in that respect based upon anything except the opinion which you have now expressed? A. None whatsoever.

Q. So you have no recollection whatsoever as to the month and year in which you were first appointed? A. None whatsoever.

Q. And so you have no recollection now as to the month and year in which your first term expired? A. No.

Q. And so you have no recollection now as to whether or not you were a Commissioner of Deeds in November, 1912, except what you have stated here? A. None other than what I have stated, and the fact, of course, that I know that I swore — I signed and filed my oath in the city clerk's office and filed a certificate in the county clerk's office.

Q. I understand. But you have known, have you not, of notaries and commissioners taking the acknowledgments in any case, of its being done in the office, the commissioner or notary forgetting that his term had expired, and then discovering that he took one during a vacancy, in the office? A. I have no knowledge but I can see how it can happen, yes.

Q. Do you recall what day of the week it was that you took this affidavit of William Sulzer? A. I do not.

Q. Do you remember what time of the day it was? A. My impression is it was in the afternoon.

Q. What time in the afternoon? A. About 3 or 4 o'clock in the afternoon.

Q. What were you doing at the particular time that that matter came up? A. Walking across the main hall of our office when Governor Sulzer's clerk came in and spoke to me.

Q. What was the name of the clerk? A. I can't give you the name, but he is still in the office there.

Q. How long had you known his being in Governor Sulzer's office, this clerk? A. Oh, I think more than a year or so.

Q. Before that? A. Before that time, yes, sir.

Q. And had you known his name? A. No, I never inquired; he was an office boy there.

Q. No, did you not inquire? Had you learned his name? A. No.

Q. Do you know it now? A. No, I do not.

Q. Where was Governor Sulzer's office located at that time with reference to your office? A. It was toward the west of the building; our suite occupies the front of the building, which is Broadway, and his is to the right, toward the west, about the center of the floor, a little further down than the center of the floor.

Q. Is it a long hall? A. Yes, it is.

Q. You are at the front end of the hall, that is, the Broadway

end of the hall and the Governor's office was in the rear end? A. Yes.

Q. What did — did this clerk of the Governor have with him when he came into your office, any paper? A. He did not.

Q. You are sure about it? A. Yes, I am sure.

Q. When, subsequent to that date, did this question of your taking of his acknowledgment first come up and was first called to your attention? A. Only at the time the accounts of the impeachment proceedings that I saw it published in the papers.

Q. When was that? A. I have no recollection of the date.

Q. Had you ever taken Governor Sulzer's acknowledgment before? A. I had.

Q. And have you taken it since? A. I believe I did take it since.

Q. And had you taken acknowledgments and affidavits for other people in Governor Sulzer's office before and since? A. Oh, yes.

Q. It was a matter of frequent occurrence? A. Oh, yes.

Q. So that there was nothing unusual about their asking you to take the acknowledgment? A. None whatsoever.

Q. Simply a daily routine matter? A. Yes, sir; a matter of courtesy between the two offices.

Q. Were you in the habit of taking acknowledgments from other people on that floor, and affidavits? A. Affidavits more frequently than acknowledgments.

Q. So I take it that from November, 1912, down until June or July or August of this year, a period of seven or eight months your attention never had been called to the taking of that affidavit? A. None other than the accounts I read in the paper, and then when I was subpœnaed before the Board of Managers.

Q. When did the matter first come up?

The President.—Was it in the spring, or two or three months later?

The Witness.— It was in the — I think it was toward the summer.

Q. The summer of 1913? A. Yes.

Mr. Marshall.— July or August.

Q. So that from the time you took the affidavit of Governor Sulzer in November, 1912, the matter was never called to your attention, and you thought nothing about it until the summer of 1913? A. That is a fact.

Q. Who talked with you about the matter of taking this affidavit since? A. Why, a good many people spoke to me—

Q. (Interrupting.) Name some of them. A. The people of the office spoke about it being published and then the other person was Mr. Kresel, in his office.

Q. When did you talk with Mr. Kresel in his office about it? A. That was, I believe, the Saturday preceding the commencement, either Friday or Saturday, I believe; about a week or so before this trial was commenced.

Q. Who do you remember of having talked with about that affidavit, or your having taken that affidavit, before you spoke to Mr. Kresel a week before this trial commenced? A. None other than the people in the office.

Q. In your own office? A. That is all.

Q. Did they know that you had taken the affidavit? A. Yes, after it was published they saw it and they spoke about it.

Q. When was it published that you had taken the affidavit? A. In the summer.

Q. Did you ever see it in a newspaper that you had taken the affidavit? A. Yes.

Q. Name the newspaper in which you saw the statement that Alfred Wolf had taken the affidavit? A. In the Times particularly.

Q. When did you see it in the Times? A. I can't say.

Q. Can you give us the week or the month? A. This summer.

Q. When did you talk about it in the office? Was there any one in the office, after you had seen it in the newspaper, was there any one in the office who remembered that you had taken it? A. None further than they knew that from seeing it in the paper.

Q. Was your recollection, when you saw it in the newspaper, fresh about all the details of taking the affidavit? A. Yes.

Q. Perfectly? A. Perfectly.

Q. As to every detail? A. Yes.

Q. Why are you so sure that the clerk who came into your office did not bring a paper with him or have it in his hand? A. None other than I knew that it was signed in my presence in the office.

The President.— You are asking for a reason; he has a right to give his own reason.

Mr. Hinman.— I beg your pardon; surely.

The President.— Whether it is good or bad.

Q. Do you want to state anything further? A. Nothing further than I recall it, that he did not have any paper; that is my recollection.

Q. Can you be positive about it? A. Positive so far as my recollection serves me.

Q. May you be mistaken in that respect? A. I may.

Q. Did you accompany the clerk directly from the office back to Governor Sulzer's room? A. Yes, sir.

Q. Walked back together? A. Yes, sir.

Q. Who did you see in the office of Governor Sulzer when you went in that day? A. Five or six people.

Mr. Kresel.— I submit, your Honors, that this is going far away from the issue.

The President.— I cannot say so.

Mr. Kresel.— Is it the claim of the other side —

The President.—They may challenge him, that he administered it. Proceed.

Q. Who do you remember —

Mr. Hinman.— I withdraw that a moment.

Q. How long had you had your offices on that floor? A. I believe since 1906 or 1907.

Q. And how long had Governor Sulzer had his office on the same floor in that same suite of rooms? A. Well, I believe two or three years at least. I am not positive; that is my recollection.

Q. But you went in there that day to take his affidavit. Who

did you see in the office besides Governor Sulzer? A. There were five or six people in his private office.

Q. In Governor Sulzer's private office? A. Yes.

Q. Name one of them? A. I believe Mr. Sarecky was one of them, but I am not positive of that.

Q. How long had you known Sarecky? A. I had seen him around about two years or so, since they were in the building.

Q. Sarecky was there? A. That is my impression.

Q. And did you know any other person in those five or six people that were in Governor Sulzer's private room beside him? A. No.

Q. Can you describe a person that you saw there besides the Governor and Sarecky? A. No, I cannot.

Q. Can you give us any idea how any one of them looked? A. I cannot.

Q. Can you tell me now what the Governor was doing when you went in there? A. Sitting at his desk.

Q. Doing what? A. I can't say; I don't recall.

Q. Describe the desk at which he sat? A. It was a roll top desk.

Q. Where did it stand? A. Against the side of the room.

Q. Which side? A. The westerly side.

Q. As you entered the room, as you enter the door in his room, did it stand at the right or left hand? A. The left hand.

Q. As you walked through the door in the private room? A. Yes.

Q. Which way did it face the desk; did the desk face you as you entered his private room, or was the back towards you, or the end? A. Why, the back was against the wall.

Q. This roll top desk stood with the back against the wall, so that the Governor as he sat there at the desk that day was facing the wall? A. Yes, that is my recollection.

Q. And what particular work was he engaged in doing? A. I cannot say except that I recall he was sitting at the desk.

Q. What were any other people or where was any other person that day in the room when you went in there? A. I can't say.

Q. Were those five or six people who were in his room at that time, standing or sitting? A. I can't recall.

Q. Not one of them, as to whether they were standing or sitting? A. No.

Q. What was any one of those five or six persons doing? A. I can't recall.

Q. Did you speak to them? A. No.

Q. Did you speak to Mr. Sarecky? A. I did not.

Q. Did you say anything to anyone except what was said to Governor Sulzer? A. No.

Q. Where did you sign your name to the affidavit? A. Right there at the desk.

Q. At whose desk? A. At the Governor's desk.

Q. What? A. At the Governor's desk.

Q. Standing or sitting? A. Standing.

Q. What pen did you get? A. I can't recall.

Q. Did you have —

The President.— Did you have your own pen or get —

The Witness (Interrupting).— I used the pen from his office.

Q. What kind of a pen did you use? A. I can't say.

Q. Did he hand you the pen or did you pick it up off the desk? A. I can't say.

Q. Did you use the same pen with which he did the signing? A. I can't say.

Q. His name appears on the affidavit written in two places? A. It does.

Q. Did you use the same pen and dip it in the same ink well that he used, the same pen that he used in signing his name? A. I can't say.

Q. Have you any recollection about it? A. No.

Q. Do you recall whether you used the ink well? A. No, I do not.

Q. Did you use a fountain pen? A. I didn't use my own; I have none.

Q. Where did you go, into his private office directly from the hall, or into a reception room? A. A small ante room.

Q. So that you entered in his office first into an ante room? A. Yes.

Q. And then in his private office? A. Yes.

Q. Who did you see in the ante room when you went to enter the Governor's private room? A. I don't recall having seen anybody.

Q. Not a soul? A. Not that I recall.

Q. A stenographer or secretary? A. I don't recall seeing anybody.

Q. As you passed from the entrance room or ante room into the Governor's private room, did you turn to the left or the right? A. I turned to the right.

Q. That is, as you stood, as you walked from the hall into the Governor's entrance room, you went to the right? A. Yes.

Q. You are perfectly clear about that? A. That is my best recollection.

Q. What papers, if any, did you see on the Governor's desk that day when you signed this affidavit? A. I can't say.

Q. Were there any papers or books or documents on his desk? A. I can't say.

Q. What furnishings were in the room that day besides the desk? A. I took no notice.

Q. Not of anything? A. Nothing.

Q. Do you know whether there were any other desks there? A. I cannot say.

Q. Any safes in that room? A. I can't say.

Q. Any book cases? A. I can't say.

Q. Any mail bags? A. I can't say.

Q. Did you see anything that you are able to describe there that day except the Governor and his desk? A. None other than the people in the room.

Q. Can you describe one of those? A. None.

The President.— You have asked him that.

Mr. Hinman.— I beg your pardon. I have.

Q. Now, what do you say — let me ask you. Where was this paper, this affidavit, when you saw it first? A. In the Governor's possession.

Q. What do you mean by that? A. He had it in front of him.

Q. What do you mean by he had it? A. On the desk in front of him.

Q. You mean it lay on the desk in front of him? A. Yes, sir.

Q. Did you observe as to the particular position in which it lay? A. I did not, no.

Q. Did you pick it up in your hand? A. Afterwards, after the Governor signed it and I swore him to it.

Q. You raised it from the desk? A. Yes.

Q. Did you observe in what form it was folded when you took it off the desk? A. No.

Q. You have no recollection about that? A. No.

Q. You don't know now what position it was in, as to being folded, when you picked it off the desk? A. No.

Q. Or when you laid it down for him to sign? A. No.

Q. Did he sign it before you picked it up? A. Yes.

Q. Who indicated where he should sign it? A. Nobody.

Q. Did he say anything about that? A. No, he did not.

Q. Which signature did he write first, the one at the top or the one at the bottom? A. The one at the top.

Q. Signed them both in your presence? A. Yes, sir.

Q. And then you picked it up and what did you say you said to him? A. I asked him — I read off the substance of the affidavit.

Q. Did you read the substance of the affidavit or did you read the affidavit? A. I believe the substance of the affidavit.

Q. Well, now, just tell us what substance, using your own recollection, you read to him that day? A. I asked him whether he swore to the contents of that affidavit, was the truth, and then I read off certain phrases out of the affidavit as printed there, and he said he did.

Q. After you asked him whether he swore to it, what reply did he make? A. He said he did.

Q. And after he had sworn to that in that way you read some of this — A. (Interrupting.) No, that was all, in one; I asked him whether he swore to the contents of the affidavit and then I read off clauses of the affidavit to him —

Q. (Interrupting.) Now, then, what clauses?

Mr. Kresel.— Let him finish.

Mr. Hinman.— I beg your pardon. I thought he had finished.

The Witness.— Then he said he did. I then signed my name as a Commissioner of Deeds.

Q. What clauses in this affidavit did you read? A. I cannot tell you without looking at it.

Q. Give me your best recollection as to what clauses of the affidavit you read?

The President.— That is incompetent. He says he cannot without looking at it.

Mr. Hinman.— I wanted to see if he had any recollection about it.

Q. Have you any recollection about it? A. Not without looking at it. I do not recall the substance of the affidavit. As I recall it, I read off to him everything except these words, which says that he is the person who signed the foregoing statement. The rest I read off to him.

By the President:

Q. Repeat again what you said, you say you read everything except the words which say he is the person who signed the foregoing statement? A. The rest I read off to him.

By Mr. Hinman:

Q. Why did you read all the affidavit except that one thing? A. Because he signed the statement before me, and I saw him sign it.

Q. Do you make it a universal rule to read to affiants the contents of affidavits that they sign? A. I do.

Q. Always? A. Oh, yes.

Q. Never administered an affidavit or took an oath yet where you did not do that? A. Not where there is a particular certificate or form attached to the affidavit. If it is the ordinary affidavit with the words "Sworn to before me," I merely then swear them, but where it has a particular form of certificate, I then read off the certificate to them.

Q. Do you notice that this has the regular certificate at the end, "Sworn to before me this 12th day of November, 1912," attached to it? A. It has that ending, but it has also another part of the certificate.

Q. Did you ever see an affidavit that did not have that ending, and that commenced as this does, with the venue? A. Yes.

Q. Do you mean to tell me that every affidavit that you ever administered in your life, as a Commissioner of Deeds which ended with these words, "Subscribed and sworn to before me this 13th day of November," you read over to the affiant, before you sign the certificate? A. I say if it has a particular certificate of that kind on it, I do.

The President.— Hasn't this gone about far enough?

Mr. Hinman.— May be.

The President.— The Court wants to give you every opportunity to test the witness, but still there is really a fair limit.

Mr. Hinman.— I recognize that.

Q. We have not been objecting because of your Honor's ruling.

Mr. Hinman.— If I may be permitted to go on.

Q. Have you ever taken in affidavits the statement of campaign expenses, before? A. Not to my knowledge.

Q. Taken any since? A. No.

Q. Do you always read affidavits that you take?

The President.— He has already told you that.

Mr. Hinman.— I withdraw it.

The President.— He says where he has an ordinary affidavit he does not, but simply swears; where there is a special form he does.

Q. Then let me ask you, do you always read affidavits that you subscribe your name to, in order to ascertain whether there is any special provision in them or not? A. No.

Q. Why did you do it this time? A. Because there it has a printed form of affidavit. I am accustomed to taking affidavits

of legal proceedings and actions, the ordinary affidavit, which just ends with "Sworn to before me," but here was one with a certificate attached in a printed form which brought it directly to my knowledge.

The President.— I think you have gone over that, and explained it sufficiently. I think you will have to proceed to another point.

Q. You stated that you administered the oath? A. Yes.

Q. What do you mean by you administered the oath? A. By that I mean asking the Governor whether he swore to it.

Q. Did you do anything other than that in connection with the taking of the oath? A. Not other than what I have previously testified to.

Q. Did you observe whether in Governor Sulzer's private room there was a door that entered from the hall directly into the private room or not? A. I did not notice.

Q. And you do not know now? A. No, I never looked to see.

Mr. Kresel.— Is that all?

Mr. Hinman.—That is all.

Mr. Kresel.— Mr. Schiff.

The Clerk.— Mr. Schiff, you do solemnly swear that the evidence which you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer, as Governor of this State shall be the truth, the whole truth and nothing but the truth, so help you God.

The Witness.— I do.

The President.— Mr. Clerk, ask the witness first for his name.

The Clerk.— Your name, please, sir.

The Witness.— Jacob H. Schiff.

Mr. Kresel.— May I call the Court's attention at this time, Mr. Stanchfield has called my attention to it, that in the defendant's answer he admits swearing to this affidavit.

The President.—Then it was hardly worth while for you to offer the witness, and we could have saved a great deal of time. It is a pity, you did not make the discovery first.

JACOB H. SCHIFF, a witness called on behalf of the Managers, having been first duly sworn, in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Kresel:

Q. Mr. Schiff, can you hear me? A. Very well.

Q. Are you a member of the firm of Kuhn, Loeb & Company? A. I am.

Q. Bankers? A. Yes, sir.

Q. In the City of New York? A. Yes, sir.

The President.— Mr. Witness, I know it may be somewhat difficult, but will you please speak in answer to the questions as loudly as possible, because the gentlemen in the farthest row are equally members of the Court, and should hear the testimony.

The Witness.—Thank you, I shall.

Q. Do you know Governor Sulzer? A. I do.

Mr. Kresel.—The witness is a little hard of hearing.

Mr. Brackett.— I suggest the stenographer read the answers of the witness to the members of the Court.

The President.— He might do it for a while, but I hope the witness will recover his voice enough to speak for himself.

Senator McClelland.— I might suggest if the witness would face more directly the audience, we may be able to hear him.

The Witness.—All right, I will.

The President.—Try and comply with that request.

Q. Did you know Governor Sulzer before he became Governor? A. I did.

Q. And for how long a period of time had you known him before he became Governor? A. I have known him for many years, I do not remember how long.

Q. Do you remember when Mr. Sulzer was nominated for Governor?

The President.— The occurrence or the time?

Q. Do you remember his nomination as Governor? A. I do.

Q. And did you send him a message of congratulation? A. I congratulated him by letter.

Q. Very well. Now, after sending him that letter, did you hear from Mr. Sulzer? A. I did.

Q. How; by letter or by telephone? A. He came to my office.

Q. Do you remember the exact date when it was that he came to your office? A. I do not.

Q. Do you remember the month? A. I think it must have been in late September or early October.

Q. Of what year? A. 1912.

Q. Now, will you state to the Court, as far as you can recall, the substance of your conversation with him at that time? A. Governor Sulzer came into my office and he discussed the general political situation. He said he was gratified that he was going to have my support. I asked him whether there was anything special I could do for him, and he said "Are you going to contribute to my campaign fund?" I said yes, I shall be willing to do so, and he said "How much will you contribute?" I said $2,500. He replied "Can you make it any more?" I then said to him no, that is about as much as I care to give you. Then he said "All right, please make your check to the order of Louis A. Sarecky"— I believe is the name. That was the conversation I had with him.

Q. Well, subsequently was there a check for $2,500 drawn? A. I gave order to the cashier to draw a check for $2,500 to said order.

Q. Now please look at this check (showing check) and state whether that is the check, with the exception of the notation on the face of it, which we shall explain in a minute? A. This is a check of my firm, Kuhn, Loeb & Co., drawn to the order of Louis A. Sarecky for $2,500, drawn on October 16, 1912.

Q. With the date of the check in mind, can you now state whether this talk that you had with Mr. Sulzer was on or about

that date? A. It was exactly on the same day; of that I am positive.

Q. Now, then, I ask you, Mr. Schiff, whether that check sent to Mr. Sarecky was afterward paid by your bank and the check returned to you? A. That was the case.

Q. Now, then, Mr. Schiff, I notice a memorandum on the face of the check which reads: "Mr. Schiff's contribution toward William Sulzer's campaign expenses." Was that memorandum on the face of the check when it was drawn and sent to Mr. Sarecky or Mr. Sulzer? A. It was not.

Q. When was that memorandum put on there and under what circumstances? A. Some time ago, I suppose some two months ago or thereabouts, I had a call from Mr. Richards, who came to me —

Mr. Marshall.— I object to the conversation between the witness and Mr. Richards as immaterial.

The President.— It is sufficient if you will say that was made by yourself, or that it was made after the return of the check to you through the bank, after it had been charged and paid.

The Witness.— That was made by myself when the check was delivered to Mr. Richards, about two months ago.

Mr. Kresel.— Now, if your Honor please, I offer this check in evidence.

The President.— If there is no objection, it will be admitted.

Mr. Marshall.— With the exception of the notation.

Mr. Kresel.— Of course that notation is not part of the check.

(Check offered in evidence, admitted and marked Exhibit M-9.)

Mr. Kresel.— I want to state I have had photographs made of various exhibits which we propose to offer, and this now being admitted as an exhibit, I desire permission of the court to have photographs of that check passed around to members of the court, so they may have copies.

The President.— You have photographed it without that addition?

Mr. Kresel.— No, the addition is on it; I could not possibly do it otherwise.

The President.— If there is no objection that may be done.

Mr. Marshall.— We don't care anything about it.

Mr. Kresel.— I have already supplied members of the court with folders in which these photographs can be inserted.

The President.— Only be careful not to hand members of the court anything until they have been admitted in evidence.

Mr. Kresel.— I certainly shall not do that.

Senator Griffin.— I would like to ask the witness a question or two.

The President.— Yes.

By Senator Griffin:

Q. First, to whom was that check just testified to handed or was it handed to anybody representing Governor Sulzer? A. When the check was originally made it was no doubt handed to Mr. Sarecky, I do not know in which way, whether it was sent him or whether he called for it; that is a detail of office work of which I do not know anything.

Q. Is there anybody in your office who can testify to these details? A. I have made inquiry in the office, but nobody can remember the circumstances, whether it was sent or whether it had been called for. I think that now after some seven or eight or nine months, it would be very difficult to ascertain that.

The President.— Is that all, Senator?

Senator Griffin.— Yes, sir.

The President.— Now, Mr. Marshall.

Cross examination by Mr. Marshall:

Q. Mr. Schiff, your relations with Mr. Sulzer were friendly? A. Very much so.

Q. And had been for some time? A. Yes, sir.

Q. And you sent him a friendly letter of congratulation? A. I did.

Q. And he subsequently called at your office in relation to those congratulations? A. He did.

Q. And in the course of the conversation you offered to give him a check of $2,500? A. I did.

Q. Now, did you, in that conversation or at any time, impose any limitations or condition upon the use which was to be made of that money by him?

Mr. Kresel.— I object to that question.

Mr. Marshall.— They charge larceny in this case.

The President.— If the objection is made to the form of the question, it is good. Is the objection made to the form?

Mr. Kresel.— Yes, if you Honor please.

The President.— Now, was anything said about the purpose?

Q. Was anything said in that conversation as to the use which was to be made of that check or the proceeds of that check by Mr. Sulzer? A. There was nothing said.

Q. Did you intend that that should be used for any specific purpose?

Mr. Kresel.— To that I object. His intent is not in question here.

Mr. Marshall.— They charge larceny.

Mr. Kresel.— The conversation which was had between the parties has already been given to the Court. As to the intent that may be drawn from that, that is a matter for the Court.

The President.— A thing that was taken with the consent of the party could hardly amount to larceny. I think I will allow the question.

Mr. Marshall.— Your Honor has ruled in my favor, but your Honor will recollect one of the counts in one of the articles is that this money was received as a bailee and wrongfully misappropriated.

The President.— You are right. The article says guilty of larceny. It may make no difference. It possibly cannot make a difference, but I imagine if I were sitting in a criminal prosecution I should have to charge the petit jury that if the owner consented to the use of the money or check given, consented to its use in any manner by the party to whom it was delivered, that would not constitute larceny.

Mr. Stanchfield.— Yes, but if your Honor please, the witness has already stated that when Governor Sulzer called upon him he talked with him with reference to contributing to his campaign fund, and he asked Mr. Schiff how much he would be willing to contribute, and Mr. Schiff told him $2,500, and Mr. Sulzer asked him whether he could not give more, and Mr. Schiff said that was all he cared to give.

The President.— Read the question.

The question was read by the stenographer as follows:

"Q. Was anything said in that conversation as to the use which was to be made of that check, or the proceeds of that check, by Mr. Sulzer? A. There was nothing said.

"Q. Did you intend that that should be used for any specific purpose?"

The Witness.— When I used the expression "campaign funds," it was a very general expression. I certainly had no objection whatsoever, and I think it was the general intent and purpose of the conversation that Governor Sulzer could use this $2,500 for whatever he would please.

Mr. Marshall.— That is all.

By Mr. Kresel:

Q. Mr. Schiff, in addition to the conversation that you have already related here between Mr. Sulzer and yourself, was there anything else said between you? A. At that time?

Q. Yes. A. No.

Q. Or at any other time between you with reference to this $2,500 contribution? A. No.

Q. Mr. Schiff, when you put on the face of this check the memorandum which now appears there, to wit, "Mr. Schiff's contribution towards William Sulzer's campaign expenses," did you not then intend, and was it not your intention when you gave your check on October 16, 1912, that that $2,500 should be used by Mr. Sulzer for his campaign expenses?

Mr. Marshall.— I object to that as incompetent and improper, and an attempt to discredit his own witness.

The President.— It is not to discredit, he cannot impeach his own witness, but he has a right to do that. He is practically your witness on this point.

Mr. Marshall.— No.

The President.— Yes, you have asked that question.

The Witness.— This is the check of my firm, and not my individual check, and when I gave it out of my hands to Mr. Richards, I put this notation so as to identify the check. I have already said that by the expression "campaign fund" or "campaign expenses" I mean something very general. It is simply an expression which I used when I gave the check, and which I put on it for its identification.

Q. Mr. Schiff, when you say that it was a general expression, do you mean anything else but that you did not intend to restrict Mr. Sulzer in the use of this money just so long as he used it for campaign purposes; isn't that what you mean? A. That is a question of how my mind ran.

Q. We are to inquire into it. A. If I searched my mind, I would say to you that Governor Sulzer could have had this $2,500 at any time and for any purpose, and if I had been very careful, I would not have probably used the words "campaign expenses," because I really meant that he should have the free use of it.

Q. Did you intend, Mr. Schiff, that he might use it for any purpose whatsoever? A. For any legitimate purpose.

Q. Do you mean by that, Mr. Schiff, any legitimate purpose connected with his campaign to be elected governor? A. It is

very difficult after eight months to state exactly what was in my mind, but so much is certain, that at that time I intended to aid Governor Sulzer personally by giving him this $2,500 for campaign expenses, in the first instance, or otherwise, as he deemed fit.

Mr. Kresel.— That is all, unless there are any questions by the Court.

The President.— Anything further? Any member of the court wish to ask any questions?

Senator Thompson.— I would like to ask the witness if at the time he gave this check, he believed Governor Sulzer was to be elected.

The Witness.— I had very little doubt of it.

The President.— That is all of the witness.

Mr. Marshall.— That is all.

Mr. Kresel.— Mr. Morgenthau.

The Clerk.— Mr. Morgenthau, you do solemnly swear that the evidence which you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer, as Governor of this State, shall be the truth, the whole truth and nothing but the truth, so help you God.

The Witness.— I do.

The Clerk.— What is your full name, Mr. Morgenthau?

The Witness.— Henry Morgenthau.

The Clerk.— Henry Morgenthau.

HENRY MORGENTHAU, a witness called in behalf of the Managers, having been first duly sworn, in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Kresel:

Q. Mr. Morgenthau, you are now the Ambassador of the United States to Turkey? A. Yes sir.

Q. And you are a lawyer by profession? A. Yes, sir.

Q. Do you know Governor Sulzer? A. I do.

Q. During the campaign of 1912, were you active in the National campaign on the Democratic side? A. I was.

Q. And did you hold office in that movement? A. I did.

Q. What was your office? A. I was the chairman of the Finance Committee of the National Committee.

Q. Do you remember seeing Mr. Sulzer shortly after his nomination for Governor? A. I do.

Q. Where was it you saw him? A. At my office at the Democratic National Headquarters, 200 Fifth avenue.

Q. City of New York? A. In the City of New York.

Q. Do you remember the exact date? A. I do, after having refreshed my memory, October 5th.

Q. 1912? A. 1912.

Q. You had some conversation with him then, did you? A. I did.

Q. Please state, as far as your recollection will serve you, what conversation you had with him? A. Governor Sulzer came to my office and told me that he wanted to thank me for what I had done to help him in bringing about his nomination, and expressed the wish and the hope that I would be of some use to him after he was elected.

We talked about the general situation, and while talking I either made out a check myself or had my clerk make out a check for $1,000, and I signed it and handed it to the Governor. He said to me, "I didn't expect that from you. I don't want it, because you are doing so much for the National Committee." I said, however, I did want to help him and gave him the check and he took it. The whole conversation was less than three or four minutes.

Q. Is this the check which you gave him? A. Yes, sir, this is the check.

Q. Was this check subsequently paid? A. Yes, sir.

Q. And the voucher returned to you by your bank? A. Yes, sir.

Mr. Kresel.— I offer the check in evidence.

The President.— Admitted.

(The check offered in evidence was received in evidence and marked as Exhibit M-10.)

Mr. Kresel.— You may examine.

Cross examination by Mr. Marshall:

Q. Mr. Morgenthau, how long have you known Governor Sulzer? A. Oh, for many, many years, possibly twenty.

Q. You knew him well and intimately? A. Yes, I knew him well.

Q. And your relations were of a friendly character? A. They were.

Q. Was there anything said in that conversation that you have narrated as to the use to which he was to put the $1,000? A There was nothing said.

Q. Did you in any way intend to limit him as to the use that he was to make of the $1,000?

Mr. Kresel.—To that I object.

The President.— I suppose that follows the same form. You may examine the witness.

The Witness.— I did not.

By Mr. Kresel:

Q. Mr. Morgenthau, had you given Mr. Sulzer any money before that? A. No, sir.

Q. Didn't you give it to him because he was the nominee of the Democratic Party for Governor? A. Certainly.

Q. Didn't you give it in order to help him along to become Governor of the State of New York?

Mr. Marshall.— I object to that as leading and improper.

The President.— That is legitimate in answer to the testimony you got from the witness.

The Witness.—At the time I felt positive he would be Governor. It was simply to help him. I was foolishly generous, and thought I would give it to him.

Q. You knew that as candidate for Governor he would have to pay certain expenses in the running of his campaign? A. Yes, sir.

Q. Was it your intention, in giving him this $1,000 to help him pay those expenses? A. That is inferential. I don't want —

Q. We are dealing now with intentions. The Court has permitted it, and I am asking you whether that was your intention? A. I really could not tell you what my intentions were. I felt I wanted to help him. I sat there as chairman of the finance committee, was handling the funds, and he came in and it flattered me to think he wanted my help, in the future, and I wanted to help him.

Q. Help him in what? A. In his election, in his canvass.

Mr. Kresel.— That is all, Mr. Morgenthau.

Senator Coats.— I would like to ask Mr. Morgenthau if Mr. Sulzer had not been candidate for Governor, if he would have given the $1,000 as spontaneously as he did?

The Witness.— Certainly not.

The President.— Does any other member of the Court care to ask a question? (No response.)

The President.— Very good.

(Witness excused.)

Mr. Kresel.— Mr. Godwin.

The Clerk.— Mr. Godwin, you do solemnly swear that the evidence which you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer, as Governor of this State, shall be the truth, the whole truth and nothing but the truth, so help you God.

The Witness.— I do.

The Clerk.—What is your full name?

The Witness.— Thomas M. Godwin.

THOMAS M. GODWIN, a witness called in behalf of the Managers, having been first duly sworn, in accordance with the foregoing oath, testified as follows:

Direct examination by MR. KRESEL:

Q. Mr. Godwin, what is your occupation? A. I am the Paying Teller of the Farmers' Loan & Trust Company.

Q. How long have you been the paying teller in that institution? A. About four years.

Q. During those four years, has William Sulzer, who is now Governor of the State, had an account in your institution? A. He has.

Q. Now I want to show you Managers' Exhibit 10, and another paper, which I ask to be marked for identification simply.

(The paper offered in evidence was received in evidence and marked as Exhibit M-11 for identification.)

Q. I show you Managers' Exhibit 10, and Managers' Exhibit 11 for identification, and ask you whether those two checks were deposited in your institution to the credit of William Sulzer? A. They were.

Q. And on what dates, please? A. On October 8, 1912.

Q. Both of them? A. Both of them.

The President.— Is the witness, Mr. Morgenthau, still in Court?

Mr. Kresel.— He has gone. If your Honor desires to have him recalled, I will recall him.

The President.— It is not worth the time of bringing him back from New York.

Mr. Brackett.— He is in the city. He did not have time to go more than down the hill.

Mr. Kresel.— I will try to have him back.

Q. I also show you this paper, which I ask to be marked for identification.

(Paper offered in evidence was received in evidence and marked as Exhibit M-12 for identification.)

Q. This is Managers Exhibit 12 for identification, and I ask you what this paper is? A. This is a slip used in making deposits with the Farmers' Loan & Trust Company in the account of William Sulzer.

Q. Of what date? A. October 8, 1912.

The President.—Try to speak a little louder, so the furthest gentlemen may hear your answers.

The Witness.—Yes, sir.

Q. October 8, 1912. During the four years you have been paying teller at the institution, have you had occasion to pass upon the validity or the correctness of the signature of William Sulzer in that account? A. I have.

Q. And in that manner have you become familiar with William Sulzer's signature? A. I have.

Q. Can you tell the Court about how many times you have seen the signature of William Sulzer?

The President.— Is the competency of this witness to pass on the signature challenged?

Mr. Marshall.— I don't think so, your Honor.

The President.—Then proceed.

Q. I show you again Managers' Exhibit 10 and Managers' Exhibits 11 and 12 for identification, and ask you to state whether on Managers' Exhibit 10 the endorsement "William Sulzer" is the signature of William Sulzer, and whether on Exhibit 11 for identification the endorsement "William Sulzer" is the signature of William Sulzer, and whether all the handwriting on Managers' Exhibit 12 for identification, is in the handwriting of William Sulzer? A. I believe these signatures to be the signatures of William Sulzer.

The President.— How about the handwriting, all the handwriting.

Mr Kresel.— I am speaking of a deposit slip.

The Witness.— I believe the handwriting of the name "William Sulzer" is in Mr. Sulzer's own handwriting.

Q. What do you say about these figures on that paper? A. In my opinion they are also in the handwriting of William Sulzer.

Senator Pollock.— I would like to have the stenographer read that last answer. We could not hear him.

The President.— Read the answer.

The stenographer read the answer as follows: "In my opinion these are also in the handwriting of William Sulzer."

Q. I show you again the deposit slips which you have just identified, and ask you to point out the entry there of the deposit of these two checks, Exhibit 10 and Exhibit 11 for identification.

The President.— What is your answer, witness?

The witness.—The third and fourth items upon the list.

The President.—Speak a little louder, please.

The Witness.— The third and fourth items upon the list of checks and cash upon the slip are the items in question.

Q. That is, the third item is an entry of a check of what amount? A. The third item is an entry of a check for $1,000 drawn upon the Guarantee Trust Company?

Q. And that is the Morgenthau check which is now Exhibit 10, is that correct? A. Yes, sir.

Q. Now, the fourth item? A. The fourth item is a check for $500 drawn upon the Plaza branch of the Union Trust Company of New York.

Q. And is that the check which is now marked Exhibit 11 for identification? A. Yes, sir, it is.

Mr. Kresel.— Mark these two checks for identification.

(The checks referred to were marked Exhibits 13 and 14 for identification, respectively.)

Q. These are now marked Managers' Exhibits 13 and 14 for identification. I ask you to examine the indorsement on the back of these two checks, and state whether or not in your opinion those are the indorsements of William Sulzer? A. This is

a check for $500, drawn upon the Guarantee Trust Company of New York, to the order of William Sulzer. This check did not pass through the Farmers' Loan & Trust Company, and I would prefer not to pass upon the indorsement.

The President.— Well, if the counsel asks you, you should answer to the best of your knowledge. If you think that you cannot tell, why of course you should not tell. If you can tell, no matter where the check went, you should answer.

Mr. Kresel.— I think it is due, if your Honor please, to the witness to state why he takes this position.

Q. Is it because you are instructed by your institution to give no testimony other than such as relates to checks passing through your institution?

Mr. Kresel.— I don't want to have the witness appear as contumacious.

The President.— Then you may withdraw the question.

Mr. Kresel.— I want to press the question.

The President.— Then he will have to answer you, despite any instruction he may have received from the bank or trust company.

The Witness.— I must answer the question?

The President.— Yes, answer the question.

Mr. Marshall.— I may have misunderstood the witness, but I understood him to say he could not answer.

The President.— What is the reason you decline to pass upon it, is it because you are not familiar with the signature or cannot tell it, or because of some instructions you have received from the trust company of which you are a paying teller?

The Witness.— It is because of instructions that I have received.

The President.— Those instructions don't give you the privilege of declining to answer the question. If you are capable of

judging you must answer the question of counsel, regardless of any instructions. Instructions of even the greatest corporation would hardly limit the duty of a witness.

Mr. Brackett.— May the question be now read again?

The stenographer read the question as follows: "Q. I ask you to examine the indorsements on the back of these two checks, and state whether or not in your opinion those are the indorsements of William Sulzer?"

The Witness.— I would like to compare these signatures.

The President.— Yes.

Mr. Marshall.— May I look at these two checks?

(Mr. Marshall examines checks.)

The Witness.— These signatures look similar to those which I have just identified.

The President.— But in your judgment, what is your judgment, witness? Of course, it is not an exact science. In your judgment is it the signature of William Sulzer or not; your best judgment?

The Witness.— Your Honor, it is rather difficult to determine that. I don't feel competent to pass upon those signatures after an examination.

Senator McClelland.—We cannot hear the answer.

Senator Healy.—What was the answer, please?

The President.— Read the answer to the Senators.

The stenographer read the answer as follows: "Your Honor, it is rather difficult to determine that. I don't feel competent to pass upon those signatures after an examination."

Q. Now, Mr. Godwin, will you give the Court the benefit of your best judgment as to whether those two signatures are the signatures of William Sulzer? A. Have I not already answered that question in the previous one that you gave me?

The President.— You can answer. You can say they are or are not, or you can say you have no judgment on the subject.

The Witness.— I have no judgment on the subject.

The President.— That is the answer.

Q. Now, I show you seven more deposit slips of the Farmers Loan & Trust Company, which will be marked for identification in rotation:

Seven deposit slips marked Exhibits M–15, M–16, M–17, M–18, M–19, M–20 and M–21 for identification.

Senator Emerson.— I would like to know whether the witness stated he was the receiving or the paying teller.

The Witness.— The paying teller.

By Senator Emerson:

Q. Do you have anything to do with receiving the deposits; do you receive the deposits? A. I do not.

Senator Griffin.— I wanted to ask or inquire if these exhibits, being checks of the Farmers Loan & Trust Company, Exhibits Nos. 15 to 21, inclusive, are the ones with reference to which Mr. Kresel has asked the witness to identify the alleged signature of William Sulzer?

The President.— On their backs, the endorsements?

Senator Griffin.— The endorsements.

The President.—Are they?

Mr. Kresel.— No; Exhibits 15 to 21 are deposit slips. What Senator Griffin is referring to is Exhibits 13 and 14. Those are the two checks about which the witness says he cannot give an opinion.

Senator Griffin.— Exhibits 13 and 14 are the two checks?

Mr. Kresel.— Yes.

Senator Griffin.— And those other numbers, 15 to 21, are the deposit slips?

Mr. Kresel.— Yes.

Senator Griffin.— And the checks are Exhibits 13 and 14?

Mr. Kresel.— Yes.

The President.— Is the statement of the counsel sufficient, Senator?

Senator Griffin.— Yes, sir.

Senator Brackett.— Will your Honor permit me to make a suggestion simply for expedition?

The President.— Yes.

Senator Brackett.— I discovered in such a trial once that if the members of the Court having general questions will wait until after the examination and cross-examination it will expedite matters very much. Of course there may be passing matters that should be asked.

The President.— There may be some things that they may forget if they wait until then. I do not think there will be any disposition on the part of any of the Senators to abuse their privilege in that respect.

By Mr. Kresel:

Q. Now, Mr. Godwin, I show you Exhibits 15 to 21 for identification and ask you whether these are deposit slips in the Farmers Loan & Trust Company to the account of William Sulzer?

Senator Emerson.— I would like to know whether the paying teller can pass on the competency of what the receiving teller receives.

The President.— That I cannot tell you. You will have to ask the witness.

The Witness.— These are slips used in making deposits with the Farmers Loan & Trust Company in the account of William Sulzer.

Q. Now, will you examine the handwriting on each one of these deposit slips and state whether in your opinion the handwriting thereon is that of William Sulzer? A. In my opinion

the handwriting upon these deposit slips is that of William Sulzer.

Q. I show you a paper, Mr. Godwin, and ask you whether that is a correct transcript of the account of William Sulzer with the Farmers Loan & Trust Company, beginning with September 5, 1912, and ending with January 1, 1913? A. I cannot say as to this statement without comparison, but I have here a statement of the account of William Sulzer from September 3, 1912, until September 20, 1913.

Mr. Kresel.— Very well, I will use that.

The President.— Why not use the one the witness knows about?

Mr. Kresel.— Certainly. I want to have that marked for identification.

(Statement referred to marked Exhibit M-22 for identification.)

Q. I also show you a letter which I will ask to have marked for identification.

(Letter referred to marked Exhibit M-23 for identification.)

Q. I ask you to state whether the signature to that is in your opinion the signature of William Sulzer? A. I am unable to form an opinion upon that signature.

Mr. Kresel.— That is all.

Mr. Hinman.— May I inquire whether that paper you are just receiving has been marked for identification?

Mr. Brackett.— It is not yet in evidence but it has been marked for identification.

The President.— Any cross examination?

Mr. Marshall.— No cross examination.

The President.— Senator Emerson, is there any question you desire to put to the witness?

Senator Emerson.— No, sir.

Senator Coats.— I would like to ask a question.

The President.— Yes.

Senator Coats.— Mr. President, I would like to have the witness take up the various checks concerning which he is unable to give an opinion in the order of their numbers and state the difference or differences between them and those which he has positively identified.

The President.— He wants to know why you are not equally able to give your judgment on those checks that you say you have no judgment on with those which you have already testified in your judgment were in the handwriting of William Sulzer. Is that the point of the question?

Senator Coats.— To explain what the difference is between those he has identified and those he cannot identify.

Mr. Kresel.— May it be made plain to the witness that he is not bound by any instructions which the Trust Company gave him?

The President.— The court has already told him that.

Mr. Kresel.— I will give him the checks in order that he may be able to answer the question.

Mr. Hinman.— The President does not clearly understand the proposition of Senator Coats, which is to have the witness take and examine the checks and point out the differences.

The President.— Yes. It was on account of my defect of hearing that I did not get that point.

Mr. Hinman.— On that proposition you will observe the witness has not qualified as an expert and that is an expert proposition.

The President.— I don't think so.

Mr. Hinman.— We don't care about it. We don't make any question about it.

Senator Griffin.— I desire to simply make a suggestion that it be announced the numbers of the exhibits that the witness is now examining, that he is now looking at.

The President.— Yes, that may be done.

Mr. Kresel.— May I step up there to do that?

Mr. Brackett.—As he announces his opinion as to each but not in advance.

Mr. Kresel.— He is now examining Exhibit 10 in evidence, and Exhibits 11, 13 and 14 for identification. Exhibit 10 in evidence and Exhibit 11 for identification he has identified the endorsements to be that of William Sulzer.

The President.— Read the question of Senator Coats to the witness, stenographer.

The stenographer thereupon repeated the question of Senator Coats as follows: "I would like to have the witness take up the various checks concerning which he is unable to give an opinion in the order of their numbers, and state the difference or differences between them and those which he has positively identified."

The Witness.— In the check signed "Lyman A. Spaulding" on the Fulton Trust Company of New York, the signature is generally irregular as compared with the one which I have identified. There is sufficient general variation in it to cause me to say that I have no opinion upon the matter; referring to Exhibit 13. With reference to the check for $500, drawn upon the Guaranty Trust Company to the order of William Sulzer, there are slight variations in the signature which I would find it rather difficult to point out except to someone who was looking at the signatures with me. It varies slightly from the other signature which I have identified, and causes me also to answer on this question that I have no judgment upon the signature.

Mr. Hinman.— May I be permitted to have the witness state who drew the check. We can follow it better than by number.

Mr. Brackett.— May I make a suggestion. Mr. Morgenthau has returned here, and it is possible, your Honor, to ask him the question to-night before adjournment, and thereby save his time, whereas this witness has to be here to-morrow anyway.

The President.—Will you step aside for a moment, witness. Mr. Morgenthau, take the stand.

HENRY MORGENTHAU, recalled:

By the President:

Q. It may be that you have answered the question which I wish to put to you. If so, I did not get it. Whose money was it that this check for $1,000 was which was given to the respondent here; was it your individual money or the money you held in your possession as one of the campaign committee? A. It was my individual money.

Senator Thompson.— Mr. Chairman, may I ask a question?

The President.— Yes.

By Senator Thompson:

Q. I think the witness stated that at the time that he gave this check. What did you say in reference to your idea as to whether William Sulzer was to be elected Governor? A. I felt sure of his election.

Q. Do you mind stating then why you gave this money? A. Not at all. As I said, it was one of those generous impulses which occasionally prompt me to do things.

Q. Was it for the purpose of creating a better standing or a more intimate relation between yourself and William Sulzer after he should have been elected Governor, knowing that he would be elected? A. No, sir.

The President.— Is there any other question to be put to the witness. That is all. Now proceed with Mr. Godwin.

THOMAS M. GODWIN, resumed:

The President.— Senator Coats, is your question answered?

Senator Coats.—Yes, sir.

Senator Blauvelt.— Mr. President, I would like to ask a question.

The President.— Proceed.

By Senator Blauvelt:

Q. I would like to ask whether as paying teller of the Trust Company if a check bearing the signature which you have refused

to identify was presented to you for payment would you pay on that signature?

The Witness.— Must I answer that question, your Honor?

The President.— I think you may answer that, yes.

The Witness.— You have reference to the signature on both these checks?

Q. Either one. A. On the check signed "Lyman A. Spaulding" upon the Fulton Trust Company, which is marked Exhibit 13, the signature bears sufficient irregularity to my eye to warrant my investigating it before paying it.

By the President:

Q. Now, as to the other check. A. The other check I cannot make out the signature upon this check drawn upon the Guaranty Trust Company for $500, and marked Exhibit 14; it looks more like the signature of William Sulzer with which I am familiar. Yet upon closer examination I think if it were presented to me upon a check for payment I would have reference to the files of the Company to compare the signature with that on file.

The President.— That hardly answers the question.

Q. Can't you say whether you think you would pay it or not; just be frank and tell us? A. No, your Honor. I think I would look it up before I paid it.

The President.— That is enough.

Senator Pollock.— Mr. Chairman, I would like to ask the witness a question.

The President.— Yes.

By Senator Pollock:

Q. I would like to ask of the witness if he has a standard taken from the files of the Farmers Loan & Trust Company with him now, and if he has, to compare Exhibit 14 with the standard and just give us his opinion? A. I have the signature card of William Sulzer as filed with the Farmers Loan & Trust Company with me. (Examining card.) I would like to state that this signature was filed with the Trust Company on May 28, 1900, and that the

general signature of William Sulzer as appearing upon the checks presented to me for payment vary slightly from that which is on file.

By the President:

Q. Have you any other on file than that which you had in your hand? A. Yes, sir.

Q. Have you got that here? A. No, sir.

Q. Why didn't you bring that? A. That is a slip pasted in a signature book.

Senator Wagner.— Mr. President, may I ask the witness a question?

The President.— Yes.

By Senator Wagner:

Q. How many checks endorsed by William Sulzer passed through your hands, approximately, between September of last year and September of this year? A. Checks drawn upon other institutions?

Q. How many times did you pass upon the signature of William Sulzer during that time? A. I am unable to say positively.

Q. I don't want you to say positively, approximately? A. About 50, I should say.

Q. About 50? A. I should say so.

Q. Did you have to investigate any of them? A. I do not recall.

Q. Your recollection is that you passed every one of them without an investigation? A. To the best of my knowledge, yes.

Q. Will you tell me who in the bank asked you not to testify as to any signature except those that went through your bank? A. No one in the bank instructed me not to do so.

Q. I understood you to answer that you were instructed not to pass upon signatures except those that passed through your bank, the bank in which you are employed? A. Through the Trust Company's counsel.

Q. The Trust Company's counsel? A. Yes, sir.

Q. What is his name? A. Horan — James F. Horan.

The President.— Witness, the Court instructs you that that advice was entirely erroneous and improper. An appeal is made to your conscience and your honesty. You ought to answer frankly and truly if you have a judgment on this, whether it is Mr. Sulzer's signature or not, utterly regardless of any advice that was given to you which I tell you was entirely improper. Now, you can answer or not.

The Witness.— Your Honor, in view of your previous instructions I have been so answering the questions.

Senator Wagner.— Mr. President, may I just follow that up with one additional question?

The President.— Yes.

By Senator Wagner:

Q. Will you tell the court exactly what this attorney, Mr. Horan, told you? A. Mr. Horan, what he told me?

Q. Yes. A. Mr. Horan gave to me a copy of a letter which he had written to Mr. Stanchfield covering this point, wherein it was stated that he did not feel—perhaps I had better quote from the letter.

Q. Can't you tell the court what Mr. Horan told you? A. I cannot give you his words, no, sir.

Q. No, I mean the substance of his instructions. A. The substance of his instructions were that the relations between the Farmers Loan & Trust Company and its depositors was one of a confidential nature, and that the company did not feel justified in having me testify as an expert upon matters which did not affect the Trust Company, or transactions not had in the Trust Company.

By Mr. Kresel:

Q. Those instructions were given you by Mr. Horan before he wrote to Mr. Stanchfield, weren't they? A. No.

The President.— We will pursue this matter further to-morrow. Just announce for all witnesses to be present to-morrow.

The Clerk.—All witnesses are excused until to-morrow morning at 10 o'clock.

The President.— Adjourn court.

The Crier.— Hear ye, hear ye, hear ye, all persons having any further business before this Court of Impeachment, held in and for the State of New York may depart hence and appear here to-morrow morning at 10 o'clock to which time this court stands adjourned.

Thereupon, at 5 P. M. the Court declared a recess until 10 A. M. Thursday, September 25, 1913.

EXHIBITS MARKED IN EVIDENCE DURING TO-DAY'S PROCEEDINGS.

EXHIBIT M-1.

(Stamped)
STATE OF NEW YORK,
OFFICE OF SECRETARY OF STATE.
Filed January 1, 1913
MITCHELL MAY,
Secretary of State.

STATE OF NEW YORK,
COUNTY OF ALBANY, } *ss.:*

I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of New York, and that I will faithfully discharge the duties of Governor according to the best of my ability.

And I do further solemnly swear that I have not directly or indirectly paid, offered or promised to pay, contributed, or offered or promised to contribute, any money or other valuable thing as a consideration or reward for the giving or withholding a vote at the election at which I was elected to said office, and have not made any promise to influence the giving or withholding any such vote.

WM. SULZER.

Sworn and subscribed before me
this 1st day of January, 1913.

MITCHELL MAY,
Secretary of State.

EXHIBIT M-2.

(Exhibit M-2 will be found on page 483 of the printed proceedings.)

EXHIBIT M-3.

Statement of Receipts and Expenditures of a Candidate for Political Office.

Sections 750 and 776 of the Penal Law:

Section 750. Definitions. The words "election" or "town meeting", as used in any of the sections of this article, excepting section seven hundred and fifty-one, shall be deemed to apply to and include all general and special elections, municipal elections, town meetings, and primary elections and conventions, and proceedings for the nomination of candidates by petition under the election law. The word "candidate" as used and candidates for any office to be voted for under the election law, as well as candidates for nomination by petition under the election law.

Sec. 776. Failure to file candidate's statement of expenses. Every candidate who is voted for at any public election held within this State shall, within ten days after such election, file as hereinafter provided an itemized statement showing in detail all the moneys contributed or expended by him, directly or indirectly, by himself or through any other person, in aid of his election. Such statement shall give the names of the various persons who received such moneys, the specific nature of each item and the purpose for which it was expended or contributed. There shall be attached to such statement an affidavit subscribed and sworn to by such candidate, setting forth in substance that the statement thus made is in all respects true, and that the same is a full and detailed statement of all moneys so contributed or expended by him, directly or indirectly by himself or through any other person, in aid of his election. Candidates for offices to be filled by the electors of the entire State, or any division or district thereof, greater than a county shall file their statements in the office of the Secretary of State. The candidates for town, village and city

offices, excepting in the city of New York, shall file their statements in the office of the town, village or city clerk, respectively, and in cities wherein there is no city clerk, with the clerk of the common council of the city wherein the election occurs. Candidates for all other offices, including all offices in the city and county of New York, shall file their statements in the office of the clerk of the county wherein the election occurs, unless the county has a commissioner of elections, in which case candidates shall file their statements in the office of such commissioner of elections.

Any candidate for office who refuses or neglects to file a statement as prescribed in this section shall be guilty of a misdemeanor. A county clerk or commissioner of elections with whom a candidate's statement of expenses is filed, shall, within 20 days after the election, file a certified copy thereof with the Secretary of State.

I, Wm. Sulzer, residing at 175 Second avenue, county of New York, N. Y., do hereby make and file the following itemized statement of all moneys received, contributed or expended by me directly or indirectly, by myself or through any other person, as the candidate of the democratic party for the office of Governor of the State of New York in connection with the general election held in the State of New York on the fifth day of November, 1912.

Receipts.

Date.	Name of Contributor.	Amount.
Sept. 23.	Herbert Friedenwald	$10 00
Sept. 2.	Hugo Gutfreund	10 00
Sept. 3.	Hugh Martin	50 00
Sept. 3.	Philip Mathews	100 00
Sept. 3.	J. Bittner	50 00
Sept. 3.	Luke D. Stapleton	50 00
Sept. 3.	S. R. Ellison	25 00
Sept. 3.	John F. Wallace	100 00
Sept. 3.	Harold I. Spielberg	25 00
Sept. 3.	Lawson Purdy	100 00

Date.	Name of Contributor.	Amount.
Sept. 3.	Andrew G. Vogt	$100 00
Sept. 3.	Thomas F. Martin	25 00
Sept. 4.	W. D. Mann	50 00
Sept. 4.	William H. Todd	50 00
Sept. 4.	Ben Doblin	5 00
Sept. 5.	Gallagher & Co.	25 00
Sept. 8.	Charles Brandt, Jr.	25 00
Sept. 7.	C. B. Norman	100 00
Sept. 3.	S. T. Armstrong	50 00
Sept. 10.	M. J. Elias	100 00
Sept. 9.	P. H. Nolan	50 00
Sept. 7.	J. E. Nolan	50 00
Sept. 9.	Peter McDonnell	250 00
Sept. 7.	Jose Hennessy	25 00
Sept. 9.	George L. Wingate	50 00
Sept. 8.	Jas. C. McEachen	100 00
Sept. 10.	Hugh Daly	25 00
Sept. 11.	Frederick C. Penfield	200 00
Sept. 11.	John R. Dos Passos	100 00
Sept. 8.	Jas. A. McCafferty	50 00
Sept. 10.	William Barthman	50 00
Sept. 11.	John F. Nagle	50 00
Sept. 14.	Thomas Willis	25 00
Sept. 16.	Nath. H. Levi	25 00
Sept. 14.	Hugh Haupt	10 00
Sept. 15.	Nelson Smith	100 00
Sept. 15.	J. W. Armstrong	10 00
Sept. 15.	A. F. Schaeffer	40 00
Sept. 16.	James F. Hurley	50 00
Sept. 15.	George W. Neville	50 00
Sept. 16.	David Gerber	150 00
Sept. 15.	William F. Carroll	10 00
Sept. 14.	Willis B. Dowd	15 00
Sept. 10.	Macgrane Coxe	200 00
Sept. 10.	Mr. Bauman	50 00
Sept. 19.	William W. Penney	50 00
Sept. 14.	Louis Conlan	110 00

Date.	Name of Contributor.	Amount.
Sept. 19.	Leo Schlesinger	$200 00
Sept. 19.	E. Neufeld	250 00
Sept. 18.	R. J. Cuddihy	50 00
Sept. 21.	Charles Friel	10 00
Sept. 21.	Wm. H. Miller	250 00
Sept. 21.	Roger Foster	250 00
Sept. 23.	W. E. Curtis	100 00
Sept. 26.	John D. Judson	100 00
Sept. 23.	John M. Gardner	200 00
Sept. 25.	C. H. Underzagt	25 00
Sept. 23.	Charles Thorley	100 00
Sept. 24.	Henry Block	100 00
Sept. 29.	M. F. O'Donoghue	10 00
Sept. 30.	John B. Gray	50 00
Nov. 1.	Louis F. Doyle	100 00
Nov. 1.	B. D. Dugundji	20 00
Nov. 2.	Joseph W. Kay	250 00
Nov. 2.	Isaac Purdy	250 00
Nov. 2.	John Standfast	5 00
Nov. 2.	O. J. Gude	100 00
Nov. 4.	J. Jacobs	500 00
		$5,460 00

Expenditures.

Date.	To whom paid.	Amount.
From Oct. 1 to Nov. 5.	Post Office Department, Stamps, etc.	$1,635 65
From Oct. 1 to Nov. 5.	Western Union & Postal Telegraph Company	52 33
From Oct. 1 to Nov. 5.	Henri Rogowski, printing	2,947 95
From Oct. 1 to Nov. 5.	Public Printer, Washington, D. C.	660 80
From Oct. 1 to Nov. 5.	Sam Bruckheimer, and assistant, stenographic work	244 00
From Oct. 1 to Nov. 5.	Whitehead & Hoag, campaign buttons	970 05
From Oct. 1 to Nov. 5.	Seiter & Kappes, lithographs	133 00

Date.	To whom paid.	Amount.
From Oct. 1 to Nov. 5.	The Hartley Company, lithographs	$150 00
From Oct. 1 to Nov. 5.	Expressage, Adams, American and U. S. Ex. Co.	68 81
From Oct. 1 to Nov. 5.	Trow's Addressing Company	861 50
Total		$7,724 09

(Signed) WM. SULZER.

Dated November 13, 1912.

STATE OF NEW YORK,
CITY AND COUNTY OF NEW YORK, } ss.:

WILLIAM SULZER, being duly sworn, says that he is the person who signed the foregoing statement, that said statement is in all respects true and that the same is a full and detailed statement of all moneys received, contributed or expended by him, directly or indirectly, by himself or through any other person in aid of his election.

(Candidate sign here) WM. SULZER.

Sworn to before me this 13th day
of November, 1912.

ALFRED J. WOLFF,
Commissioner of Deeds No. 72, New York City.

(Endorsed)

STATEMENT OF CANDIDATE FOR POLITICAL OFFICE.

By WILLIAM SULZER,

Candidate of the Democratic Party, for the Office of Governor, of the State of New York.

STATE OF NEW YORK,

OFFICE OF SECRETARY OF STATE.

Filed November 14, 1912.

EDWARD LAZANSKY,
Secretary of State.

EXHIBIT M–4.

STATEMENT OF TREASURER OF POLITICAL COMMITTEE.— SECTION 546 OF THE ELECTION LAW.

Section 546. Statement of campaign receipts and payments. The treasurer of every political committee, which, or any officer, member or agent of which, in connection with any election receives, expends or disburses any money or its equivalent or incurs any liability to pay money or its equivalent shall, within twenty days after such election, file a statement setting forth all the receipts, expenditures, disbursements and liabilities of the committee, and of every officer, member and other person in its behalf. In each case it shall include the amount received, the name of the person or committee from whom received, the date of its receipt, the amount of every expenditure or disbursement, the name of the person or committee to whom it was made, and the date thereof; and unless such expenditure or disbursement shall have been made to another political committee, it shall state clearly the purpose of such expenditure or disbursement. Expenditures and disbursements in sums under five dollars need not be specifically accounted for by separate items, except in the case of payments made for account of or to political workers, watchers or messengers. The statement to be filed by a candidate or other person not a treasurer shall be in like form as that hereinbefore provided for, but in statements filed by a candidate there shall also be included all contributions made by him.

WILLIAM SULZER PROGRESSIVE LEAGUE PARTY.

NEW YORK COUNTY,
New York City.

To the Secretary of State, Albany. N. Y.:

Pursuant to the provisions of section 546 of the Election Law, I, Leon C. Weinstock, treasurer of the committee, representing the William Sulzer Progressive League Party in the county of New York, do hereby report that the following is a statement of all moneys received, expended, disbursed or liabilities incurred by said committee and of every officer, member or other person in its behalf in connection with the general election held in the county of New York on the fifth day of November, 1912, viz.:

Receipts.

Date of receipt. 1912.	Name of person or committee from whom received; when from committee, give name of, and of person through whom received.	Amount received.
Oct. 16.	Samuel A. Potter	$15 00
	William Bagley	5 00
	Peter Geoheghan	10 00
	Bernard Nolan	10 00
	John H. Wuest	5 00
	Henry Friedman	10 00
	Fred Ackerman	5 00
Oct. 17.	M. A. Schulman	10 00
	A. S. Aaronstamm	10 00
	Aug. Janssen	125 00
	J. Oshlag	25 00
Oct. 18.	Leo Greenebaum	25 00
Oct. 19.	Jacob Hellerstein	25 00
	Robt. Hatch	10 00
Oct. 25.	M. B. Fertig	25 00
	A. G. Imhof	15 00
	L. C. Weinstock	50 00
Nov. 1.	Jefferson M. Levy	40 00
Nov. 4.	Ben. Friedman	10 00
	B. Sueskind	10 00
Nov. 4.	Abe Levy	10 00
	Total	$450 00

Expenditures, Disbursements and Liabilities.

Date of payment. 1912.	Name of person or committee to whom made; when committee, give name of and of person through whom made.	Amount.	Purpose of expenditure.
Oct. 16.	Meyer Wolff	$5 00	Postal cards.
Oct. 20.	Meyer Wolff	26 80	Stamps.
Oct. 20.	Meyer Wolff	9 25	Stationery.
Oct. 20.	Jos. J. Roth	17 50	Distribution of literature, etc.
Oct. 20.	R. Grossman	35 00	Signs.
Oct. 20.	J. Kupatt	4 45	Electric wiring on sign.
Oct. 25.	R. Grossman	23 00	Signs.
Oct. 29.	Man. Slide Co.	17 50	Lantern slides.

Date of payment. 1912.	Name of person or committee to whom made; when committee, give name of and of person through whom made.	Amount.	Purpose of expenditure.
Oct. 29.	Meyer Wolff ...	$5 00	Stationery, etc.
Oct. 25.	Edwd. Ernst ...	7 00	Distribution of litera ture.
Oct. 25.	Alex. Patrick ..	5 00	Distribution of litera ture.
Oct. 31.	Jos. J. Roth....	17 00	Distribution of litera ture.
Nov. 2.	Edward Ernst .	16 50	Distribution of litera ture.
Nov. 2.	Alex. Patrick ..	16 50	Distribution of litera ture.
Nov. 2.	Meyer Wolff ...	2 10	Stationery.
Nov. 6.	Joseph J. Roth.	33 00	Distribution of litera ture.
Nov. 6.	Stamps, M. Wolff	3 20	Stamps.
Nov. 5.	Jos. J. Roth....	5 00	Decorating and distribu ting literature, Sewar Park meeting.
Nov. 2.	Alex. Patrick ..	2 00	Stationery, etc.
Nov. 2.	Jos. J. Roth....	17 00	Expenses, etc., distribu tion of literature.
Nov. 6.	Meyer Wolff Assc	100 00	Rent and electricity.
Nov. 6.	Morris Levine ..	22 50	Automobile hire.
Nov. 6.	R. Rosenthal ..	4 00	Wagon hire.
Nov. 6.	R. Grossman ...	10 50	Signs.
Nov. 6.	Royal Press ...	5 75	Printing.
Nov. 6.	Ed. Ernst, Jos. J. Roth, A. Patrick & H. Lang..	31 60	Distribution literatur etc., help Seward Par meeting.
Nov. 6.	Meyer Wolff	5 00	Flags, etc., Seward Par meeting.
		$451 15	

Dated, November 11, 1912.

(Signed) LEON C. WEINSTOCK,
Treasurer.

(Endorsed)
NEW YORK COUNTY,
NEW YORK CITY,
WILLIAM SULZER PROGRESSIVE LEAGUE,
By L. C. Weinstock (Treas.)
STATE OF NEW YORK,
OFFICE OF SECRETARY OF STATE,
FILED NOV. 16, 1912.
Edwd. Lazansky,
Secretary of State.

EXHIBIT M–5.

(Exhibit M–5 is the articles of impeachment, which appear at pages 59–70 of the printed record.)

EXHIBIT M–6.

Resolved, that the managers on the part of the Assembly in the matter of the impeachment of William Sulzer, Governor of the State of New York be and hereby are authorized to appoint a clerk and messenger, to be paid for their services to a rate to be fixed by the Speaker and the clerk of the assembly, payable from the contingent fund of the assembly during the time that they are employed, and that the said managers shall have power to employ counsel and to have all the powers of a legislative committee.

EXHIBIT M–7.

(Stamp)
SENATE JOURNAL.
AUG. 13, 1913.
PAGE 2.

The following committee, Messrs. Van Woert, Cole and Bradley, from the Assembly appeared in the Senate Chamber and delivered the following message:

Mr. President:

In obedience to the order of the Assembly, we appear before you in the name of the Assembly of the State of New York and all the people of the State of New York: We do impeach William Sulzer, Governor of the State of New York, of wilful and corrupt misconduct in office and for high crimes and misdemeanors and we do further inform the Senate that the Assembly will, in due time, exhibit articles of impeachment against him and make good the same and in their name we demand that the Senate shall take order for the appearance of said William Sulzer to answer said impeachment.

Ordered that said message be received.

EXHIBIT M–8.

STATE OF NEW YORK, } *ss:*
COUNTY OF ALBANY. }

PATRICK E. MCCABE, being duly sworn, deposes and says:

I reside at Albany, N. Y. I am now and at all the times hereinafter mentioned have been the Clerk of the Senate of the State of New York. On the 14th day of August, 1913, pursuant to instructions of the President Pro Tem. of the Senate, I personally served upon William Sulzer, Governor of the State of New York, at his office in the Executive Chamber in the Capitol at Albany, State of New York, articles of impeachment, of which the annexed is a true copy, by leaving such articles of impeachment with said William Sulzer at said time and place.

PATRICK E. McCABE.

Sworn to before me this
11th day of September, 1913.
SIDNEY I. ROSS.

(Seal) Notary Public. Certificate Filed in Albany Co.

SIDNEY I. ROSS,
Notary Public,
Chenango Co., N. Y.

THE STATE OF NEW YORK, *ss:*

The Senate of the State of New York to William Sulzer, greeting:

Whereas the Assembly of the State of New York did, on the thirteenth day of August, One Thousand Nine Hundred and Thirteen, exhibit to the Senate articles of impeachment against you, the said William Sulzer, in the words following:

(Here appear the articles of impeachment which will be found at pages 59–70 of the printed record.)

And demand that you, the said William Sulzer, should be put to answer the accusations as set forth in said articles, and that such proceedings, examinations, trials, and judgments might be thereupon had as are agreeable to law and justice.

You, the said William Sulzer, are therefore summoned to be and appear before the Court for the trial of impeachments of the State of New York, at the Senate Chamber in the Capitol at Albany, N. Y., on the eighteenth day of September, One Thousand nine hundred and thirteen, at twelve o'clock noon, then and there to answer to the said articles of impeachment, and then and there to abide by, obey, and perform such orders, directions and judgments as the court for the trial of impeachments shall make in the premises according to the Constitution and laws of the State of New York.

Hereof you are not to fail.

Witness the Hon. Robert F. Wagner, President of the Senate of the State of New York, at the city of Albany, this thirteenth day of August, in the year of our Lord One thousand nine hundred and thirteen.

ROBERT F. WAGNER,

President of the Senate.

EXHIBIT M–9.

No. 119755. KUHN, LOEB & Co.,

NEW YORK, *Oct.* 14, 1912.

(1) NATIONAL BANK OF COMERCE IN NEW YORK

Pay to the order of Louis A. Sarecky, two thousand five hundred dollars, $2,500/00.

P. P. KUHN, LOEB & Co.
KUHN, LOEB & Co.

(On face of check in handwriting): Mr. Schiff's contribution toward Wm. Sulzer's campaign expenses.

(Endorsed):

Louis A. Sarecky.
Pay to the order of The National Bank of Commerce.
Oct. 15, 1912.
The Mutual Alliance Trust Co. of New York.
(11)Nat. Bank of Commerce in N. Y.
Paid.
Oct. 15, 1912.
Second Teller.

EXHIBIT M–10.

No. 1344. NEW YORK, 10/5, 1912.

GUARANTY TRUST COMPANY OF NEW YORK

28 NASSAU STREET.

Pay to the order of William Sulzer one thousand and no/100 Dollars, payable through the New York Clearing House,

H. MORGENTHAU.

$1,000.00.

(Endorsed):

William Sulzer.
Pay the National City Bank of New York, or order.
The Farmers Loan & Trust Company,
Augustus V. Heely, Vice-Pres. & Secy.
Received payment through the New York Clearing House, October 8, 1912.
Prior endorsements guaranteed.
The National City Bank of New York, A. Kavanagh, cashier.

SENATE CHAMBER,

ALBANY, N. Y., *September* 25, 1913.

Pursuant to adjournment the Court convened at 10 A. M.

PRESENT:

Hon. EDGAR M. CULLEN, Presiding Judge,
and
THE JUDGES OF THE COURT OF APPEALS,
and
THE SENATORS OF THE STATE OF NEW YORK.

APPEARANCES:

THE MANAGERS:

Same as heretofore.

Counsel for the Managers:

Same as heretofore.

Counsel for the Respondent:

Same as heretofore.

The President.— Call the roll, Clerk.

The Clerk thereupon called the roll and found a quorum to be present with the following absentees:

Senator Brown.
Senator Emerson.
Senator Frawley.
Judge Gray.
Senator McClelland.
Senator Pollock.

The President.— Crier, open Court.

The Crier.— Hear ye, hear ye, hear ye, all persons having any business before this Court of Impeachment held in and for the State of New York, may now draw near, give their attendance and they will be heard.

The President.— Now, if you please.

Mr. Brackett.—With the permission of the Court, I desire to move, if your Honor will take the printed record on page 524 I will give you my copy; I have another one here.

Judge Bartlett.—What page, Senator?

Mr. Brackett.— 524. I move to strike out on behalf of the Managers the answer appearing in the lower third of page 524, as entirely incompetent and improper. If your Honor will look nearer the top of the page, the ruling was that if the owner consented to the use of money for a specific or for general purposes, that in that case larceny cannot be predicated upon it in case it was diverted from the specific purpose for which we contend it was contributed.

Judge Werner.—You mean the answer beginning, "When I used the expression campaign funds?"

Mr. Brackett.—Yes. Now, the specific ground of the motion is just this: That while as your Honor ruled we concede and not only concede but claim it is entirely correct that if the witness did consent that the Presiding Judge did not by that ruling at all give any indication of what should be evidence of consent, and I want to submit to the Court that the only possible evidence on the subject of what the consent was in its effect on the recipient of this money, must be what the witness said. Now, what the witness said is entirely clear without any possible mistake. He said that the defendant here applied to him for a contribution to his campaign fund. There can't be any doubt as to what the meaning of a campaign fund was. The witness said that he responded that he would contribute to the campaign to the extent of $2,500, and upon being interrogated as to whether he could not make it more, he said no, and he has testified in the record several times that that was all the conversation on the subject.

Now, I want to submit to the Presiding Judge and to members of the court that the intent for which the contribution was made must be determined from that language. The undisclosed intent of the witness who gave the funds, it cannot be that that

can in the slightest degree control the individual or broaden the right of the individual to whom it was not disclosed. The question as to what the money was given for must be determined by what was said between the Governor and the recipient.

I do not understand, if your Honors please, that evidence of an undisclosed intention, or evidence of intention at all, is competent, except in the very, very few cases where a party is attacked, where the act of a party is attacked for fraud, as for example, a fraudulent intent to cheat creditors by a conveyance. In such case it always may be asked as to whether the party giving the instrument did intend to defraud, and there may be one or two other very few limitations further in addition to that one. But the general rule has been, with unbending force, that an undisclosed intention cannot be given in evidence in Court.

It is doubly vicious here, it seems in view of the counsel for the Managers, in that the intent of the defendant is what must be determined here, in receiving. It violates first the rule that conversation must determine the intent, but next it permits the witness to testify as to his intent when his intent cannot affect the intent with which the witness accepts the fund.

It is therefore with, of course, the most profound respect for your Honors' ruling, if you did intend to go to the extent indicated, that we still feel impelled to make this motion as not only in its effect here, but as a guide for any future witness that may be interrogated on the subject.

Mr. Marshall.— May it please the Court, the testimony that was brought out on direct examination was in substance that Mr. Schiff had given a check. The check was produced. On that check appeared written certain words which Mr. Schiff put upon the check, not in October, 1912, but in June or July, 1913, stating in substance that it represented a campaign contribution.

The testimony therefore that was presented on cross-examination was entirely legitimate as bearing upon that, if for nothing else. But it was competent beyond that on the general issue, on the general proposition which we are considering.

The charge contained in the articles is that certain sums of money were received by the respondent from various individuals,

including Mr. Jacob H. Schiff; that that money was received in a fiduciary capacity; that it was received for a special purpose; that there was a breach of trust, and that there was larceny of that money as a result of the manner in which the respondent dealt with the money after it came into his possession.

The case, therefore, is to be considered precisely the same as though we were here trying an indictment against the respondent on the charge that he had received from Jacob H. Schiff $2,500, and had, with larcenous intent and with intent to commit a breach of trust, diverted that money from the purpose for which it was given and was intended to be given, and had thereby committed either the crime of larceny or breach of trust, as a bailee or otherwise.

Now, therefore, in determining that question, we must consider the quo animo of two individuals; that of the respondent, for the purpose of ascertaining whether or not he dealt with that fund animo furandi, with intent wrongfully to take it and appropriate it to his own use — with criminal intent; and secondly, the purpose and state of mind of the person who is claimed to have been the victim of that crime, the person whose title to the fund was taken, who was the person whose property had been wrongfully and with larcenous intent taken from him.

Now, certainly, if the charge is made that A has stolen my watch or that A has received my watch as a bailee and has then wrongfully appropriated it to his own use, certainly it would be competent to ask me if I were a witness in the proceeding, for the purpose in which that issue were tried, whether or not I intended that he might have the watch, or whether or not I intended that he could do with that watch what he pleased, use it for any purpose that he pleased; sell it, give it away, or deal with it according to his own desires, because I cannot be wrongfully made the victim of a crime when I consent and am willing that the particular act shall be done, when I have no objection to it; and, therefore, when Mr. Schiff was here as a witness, and it was attempted to show by him that he had given this fund for a special purpose, he could very well be asked the question, and properly answer the question, as to whether or not he had so ear-marked this fund as to make it absolute beyond the control of the defend-

ant, and whether he was or was not satisfied and willing that that fund should be used for election purposes, for campaign purposes, or for any purpose or desire that the person to whom the money was given wished to use it.

Mr. Brackett.— With the permission of the Court: It is entirely beside the issue to say that it is competent to show what Mr. Schiff's intention was. If that is true, and it may be conceded for the purpose of the argument, although I am not prepared to say that it is entirely true, but if that is true the precise question which my friend fails to meet and where he painfully sidesteps is how that intention shall be determined. What is the evidence of the intention? Mr. Schiff intended to give this money. There is not any question about that. He intended to part with the title to the money to someone. Now, if there was a specific beneficiary for whom he had given this money and entrusted it to Sulzer, is there any doubt that the beneficiary could then maintain an action for conversion? Here the beneficiary happens to be so multitudinous and perhaps so diaphanous in its substance, that is, the democratic party, that we might not be able to determine who could bring the action, but if Mr. Schiff had given this money to the then candidate for a specific purpose thereafter it is not Mr. Schiff's money. The conversion does the wrong through the person to whom it was intended to give it and for whom it was intrusted to the candidate to be delivered. So it stands that whatever Mr. Schiff's intention was, and conceding all that the learned counsel has said that his intention may be competent for the purposes of the argument, it still stands too that the intent must be determined by what was told by Mr. Schiff to this bailee at the time the money was placed. That is absolute and specific. He says he gave it to him for a campaign fund, and he says he has testified to all that was said on the subject. Now it goes way beyond any rule that I know of, and it certainly goes beyond the language of your Honor's ruling in saying that it was competent to show consent, which appears at the top of page 524 where your Honor says, "That if the owner consented to the use of the money or check given, consented to its use in any manner by the party to whom it was delivered, that would not constitute larceny." It goes way beyond that language to permit our friend

to ask him what was his intent unspoken and undisclosed in any way in thus giving the money.

I submit, therefore, that it cannot be held competent. Suppose that at the time this money was given instead of a conversation on the subject that Mr. Schiff has set down and had written out a more or less formal conveyance of the $2,500 for the purposes of a campaign fund precisely as he testified he told the candidate, could he then be heard to impeach the conveyance or to modify its terms by giving testimony that he did not intend what he had written in his conveyance establishing or constituting the trust? Now, it makes not the slightest difference for the purposes of this argument what the competency of this evidence is, whether the trust deed if I may use that expression was in writing or whether it was verbal. It must depend in the one case on the writing. It must depend in the other case upon what was said, and in neither case can it be held that the terms of the trust can be varied in the slightest degree by testimony given afterwards as to an intention wholly undisclosed at the time that the trust was created. There is not any ambiguity or obscurity in the language that was employed.

The President.— I think I shall adhere to the ruling heretofore made. If it was a common law larceny, I should be certain that my ruling was correct, because a common law larceny requires a trespass as well as a conversion of the property. There could hardly be a trespass if the owner assented. The trespass must be against the consent. The question is not so simple, it must be admitted, when you come to the larceny as defined by the Code. That crime is solely the creation of statute. At common law it would not have been a criminal conversion of property.

Now, as to the conversion, it is not so clear; but yet I believe that the same underlying principle should not obtain as that in a common law larceny. And therefore it is, though I may hereafter change my ruling if I look at the authorities, I may change my ruling, for the present I shall adhere to it, and let that testimony stand, though some of that testimony is objectionable. It is not what his feeling is now, of the witness; it is not what he feels now; he might have been satisfied. But the question is what was his intent at the time, and to that he should be strictly confined.

If there was an offense committed, he cannot condone it by saying now that he was satisfied, no more than if my watch was taken by a person. It must be his intention at the time.

Now, proceed, gentlemen.

Mr. Kresel.— Mr. Godwin.

THOMAS M. GODWIN, a witness called by the Managers, having been previously sworn, recalled for further direct testimony, testified as follows:

Direct examination by Mr. Stanchfield:

Mr. Stanchfield.— This is the same witness that was on the stand at the time of the adjournment yesterday.

Q. Mr. Godwin, you stated last night, at the time of the adjournment —

The President.— Mr. Stanchfield, I am afraid the gentlemen in the rear won't hear you in that tone of voice.

Mr. Stanchfield.— My voice will increase in volume, if your Honor please, in time.

The President.— Gentlemen will please keep absolute quiet, if possible, because it is difficult for the members of the Court in the rear to even hear under the best of circumstances.

Mr. Stanchfield.— Well, is there any member of this Court that has the slightest difficulty in hearing what I am saying?

(No response.)

Mr. Stanchfield.— There does not seem to be any difficulty if your Honor please.

Judge Werner.— The only difficulty, Mr. President, that we seem to have here is when counsel turn the other way.

Mr. Stanchfield.— I once asked of your Honor that if we could have the witness chair with the dais in the well, it would be better. I still insist it would be better for all concerned upon this trial. It is impossible —

The President.— We will make the experiment, possibly, at the afternoon session, to see if that works all right.

Q. Mr. Godwin, you stated last night that your first instructions not to testify with reference to any signatures other than those that passed through the Farmers' Loan and Trust Company, of the respondent, were given to you by Mr. Horan at the time when he showed you a letter which he wrote to me. Now, is that answer correct? A. Yes, sir.

Q. Do you know Mr. Kresel, who examined you yesterday? A. I do.

The President (to the witness).— Speak very much louder.

The Witness.— I do.

Q. Did you see him at the office of the Farmers' Loan. A. I did.

Q. In whose company did you see him? A. In the company of Mr. Horan.

Q. The same lawyer that you say advised you with reference to your testimony at the time he wrote me? A. Yes, sir.

Q. Now, when you saw Mr. Horan and Mr. Kresel together on the 16th or the 17th, was not Mr. Kresel's errand there to get you to give testimony with reference to other signatures than those that passed through your bank? A. I believe the question arose.

Q. Yes. And at that interview between you three, did not Mr. Horan tell you that you ought not and should not testify to any other signatures than those that had passed through your bank? A. I do not recall that he did.

Q. What did he tell you? A. I simply heard him state the company's wishes in the matter.

Q. Well, what did he say were the company's wishes? A. As I recall, I believe he stated that the Trust Company did not wish me to volunteer an opinion on transactions not had in the Trust Company, unless directed to do so by the Court.

Q. That conversation took place at your first interview with Mr. Kresel? A. Yes, sir.

Q. Now, when Mr. Horan gave you a letter, or a copy of a letter to me, did he show you the letter that I wrote him? A. No, sir.

Q. Have you got the letter that he wrote me? A. I have the letter that he gave me as a copy of the letter.

Q. See if it is not in answer to one from me.

Mr. Herrick.— How is this material, Mr. President?

Mr. Stanchfield.— I will make it material.

The President.— I think it may be material.

Mr. Herrick.— He responded and answered after you had told him he must. We have no exception, only we are wasting time.

The President.— He is not concluded absolutely by that answer, Judge Herrick.

Q. The letter that he wrote me is in answer to one from me, upon the face of it, is it not? A. Yes, sir.

Q. Now, you had still more specific instructions, did you, from Mr. Horan, not to testify to any other signatures than those that had passed through your bank? A. I had no specific instructions not to testify to certain matters.

Q. Have you communicated with Mr. Horan since you were on the stand yesterday? A. I telephoned to him yesterday.

Q. Since you were upon the stand, I asked you? A. Yes, sir.

Q. Did you get any further instructions from him as to your attitude? A. No, sir.

Q. Did you tell him that you had been instructed here to answer the questions with reference to other signatures than those that had passed through your bank? A. Yes, sir.

Q. What did he say? A. I don't recall that he made any comment upon that.

Q. Didn't he tell you whether or not you should obey the instructions of the Court? A. He did already tell me that before.

Q. So that you now understand that you are to obey the instructions of this Court in your testimony? A. I have always understood that.

Q. Now, upon these three exhibits for identification —

The President.— No, Mr. Stanchfield, those are circumstances under which you cannot be heard.

(Referring to Mr. Stanchfield's approaching the witness stand.)

Q. I hand you exhibits for identification 15, 16, 20, 21 and

12? (Counsel passes papers to witness.) A. (Witness examines papers.)

Q. Those are five deposit slips of William Sulzer with the Farmers' Loan and Trust Company, are they not? A. Yes, sir.

Q. You haven't any question in your mind but what the name "William Sulzer," upon the face of those deposit slips, is in his handwriting, have you? A. No, sir.

Mr. Marshall.— He has already so testified.

Mr. Stanchfield.— I understand that perfectly well.

Q. And you likewise expressed the same thing with reference to the figures? A. I did.

Q. Now, I hand you — and it will be marked for identification —

The check offered for identification was received and marked Exhibit M-24 for identification.

Q. I hand you a check of Strauss & Company. Does there appear upon it the endorsement of William Sulzer? (Counsel passes paper to witness.) A. (After examining.) There appears upon it an endorsement "William Sulzer."

Q. I ask you, Mr. Godwin, whether in your opinion that indorsement is in the handwriting of William Sulzer or not, the respondent in this proceeding; in your opinion is it in his handwriting or is it not? A. I have no judgment in the matter.

Q. I didn't ask your judgment. In your opinion is it his handwriting or isn't it? I don't care which way you answer. I want to know in your opinion is it or is it not? I want an answer to the question. You must have an opinion of some kind. A. I don't feel qualified to give an opinion on this.

Q. I have not asked you that. I want to have your opinion whether it is or is not.

The President.—I think you are going a little too far. You can ask him if he has or has not an opinion on the subject. If he has any opinion he must give it, and be frank with the Court and answer fairly.

Q. Do I understand you to take the attitude —

The President.— Now, wait and see if he will answer that question.

The Witness.— Your Honor, I have no judgment in this signature. I don't dare to affirm that it is or is not.

The President.— He did not ask you to do that. What is your best opinion? Have you an opinion on the subject?

Q. That is all I am asking you, simply whether you have an opinion? A. I am inclined to the opinion that that is the signature of William Sulzer.

Q. I hand you while those signatures are lying before you on the desk, Exhibits 13 and 14, for identification, to which your attention was invited yesterday, and I ask you whether you don't have now the same opinion with reference to them?

Senator Murtaugh.— Will the stenographer read the answer to the last question.

The President.— I did not hear you.

Senator Murtaugh.— Will the stenographer read the answer to the last question.

The President.— Read the question and answer.

(The stenographer read the question and answer as follows): "That is all I am asking you simply whether you have an opinion? A. I am inclined to the opinion that that is the signature of William Sulzer."

The President.— Now read the last question.

The stenographer read the question as follows: "I hand you while those signatures are lying before you on the desk, Exhibits 13 and 14, for identification, to which your attention was invited yesterday and I ask you whether you don't have now the same opinion with reference to them?"

The Witness.—Yes, sir.

Q. Now, Mr. Godwin, will you take those five deposit slips. You have them in your hand? A. Yes, sir.

Mr. Stanchfield.— I offer those in evidence.

The President.— If there is no objection they will be admitted.

Judge Bartlett.—Won't you please tell us in a general way what they are?

Mr. Stanchfield.— I will in just a minute.

The President.—Won't it be sufficient if you say certain exhibits hitherto marked for identification are now received in evidence?

Mr. Stanchfield.— I am going to read them so there won't be any mistake what they are. The exhibits that go in evidence for identification are 21, 15, 16, 12 and 20. I will read one:

" Deposited by.....

In Farmers' Loan & Trust Company, New York, December 28, 1912.

Bills.....	$3,000 00
Specie.....	.....
Checks.....	.....

Said exhibits for identification received in evidence and marked Exhibits M-15, M-16, M-20, M-21 and M-12 respectively.

Q. Will you take those five exhibits and figure up how much cash was deposited by William Sulzer in your bank between the dates covered by those exhibits in October, November and December, 1912? A. $14,400.

Q. In currency? A. In currency.

Mr. Herrick.—Will you give us the dates?

Mr. Stanchfield.—Yes. The dates are as follows. I will get them in chronological order:

Exhibit 12, October 8th, 1912, bills, $1,400.
Exhibit 15, September 12th, 1912, bills, $3,500.
Exhibit 16, September 25th, 1912, bills, $4,000.
Exhibit 20, October 10th, 1912, bills, $2,500.
Exhibit 21, December 28th, 1912, bills, $3,000.

Mr. Stanchfield.— That is all, Mr. Godwin.

Mr. Marshall.— No cross-examination.

Mr. Stanchfield.— Mr. Elkus.

The Clerk.— Mr. Elkus, you do solemnly swear that the evidence which you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer as Governor of this State, shall be the truth, the whole truth and nothing but the truth, so help you God? A. I do.

ABRAM I. ELKUS, a witness called on behalf of the Managers, having been first duly sworn, in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Stanchfield:

Q. Mr. Elkus, where do you reside? A. New York City.

Q. What is your vocation or profession? A. Lawyer.

Q. You likewise hold public office? A. I am a Regent of the University of the State of New York.

Q. Are you acquainted with the respondent in this proceeding, William Sulzer? A. Yes, sir.

Q. Does your acquaintance extend over a considerable period of time? A. Yes, sir.

Q. About how long? A. About twenty years.

Q. On the 4th day of October, 1912, did you write the respondent a letter of which I hand you a copy? A. Yes, sir.

Mr. Stanchfield.— Will the gentlemen upon the other side kindly produce the original of Mr. Elkus' letter?

Mr. Marshall.— Use the copy.

Q. The letter you have in your hand, I understand you to say, is a correct copy of the letter you mailed him October 4th? A. Yes, sir.

Mr. Stanchfield.— I offer it in evidence.

The Witness.— This letter — this copy, has no signature.

Mr. Stanchfield.— Counsel for the respondent tell me to use it with like effect as if it were the original.

Letter offered in evidence received in evidence and marked as Exhibit M-25, and is as follows:

"*October* 4, 1912.

"HONORABLE WILLIAM SULZER, 115 *Broadway, New York City:*

"MY DEAR FRIEND:

"I beg to extend to you my heartiest congratulations upon your well deserved nomination for Governor. I know you will make a most admirable candidate and if elected will render most valuable service in the capacity of Governor to the State, just as you have rendered valuable service in all your public positions heretofore.

"I know that congratulations are very pleasant and very nice, but that a campaign to be successfully conducted, requires something more than words, and so I take great pleasure in enclosing my check for $500 to aid in the expenses of your campaign.

"I shall be very glad to speak for you as often as my engagements with the National Committee will permit, and take every opportunity of telling the people of our long standing friendship and of the high regard in which we all who know you hold you.

"I remain,

"Sincerely yours,"

Q. And I suppose it was signed Abram I. Elkus? A. Yes, sir.

Q. I hand you a check upon the Union Trust Company and ask you whether or no, Mr. Elkus, that is the check that you enclosed in the letter that I have just read? A. It is.

Mr. Stanchfield.— I offer that in evidence.

The check marked Exhibit M-11 for identification, was received in evidence and marked Exhibit M-11 in evidence of this date.

Mr. Stanchfield.—" New York, October 5th, 1912.

Plaza Branch, Union Trust Company of New York.
Fifth Avenue and 60th street.

Pay to the order of William Sulzer
Five hundred dollars.

Abram I. Elkus."

Endorsed by William Sulzer.

Mr. Marshall.— Endorsed William Sulzer.

Mr. Stanchfield.— I say endorsed William Sulzer. Is there any question but what it is his signature?

Mr. Marshall.— I am not an expert.

Mr. Stanchfield.— You are quite an expert. I will take your judgment.

Mr. Marshall.— I merely wish to have the counsel state what was on the check without anything further, without giving testimony.

Mr. Stanchfield.— The name William Sulzer is on the back.

Mr. Marshall.— That I concede. That is all you have a right to say.

The President.— Has the endorsement been proved?

Mr. Kresel.— It has.

Mr. Stanchfield.— I might say it was proved by the last witness, Godwin.

Mr. Marshall.— That is the question, whether it was proven.

The President.— I don't remember. I don't carry in mind these various numbers.

Q. I hand you a letter. Is that the letter you received in response to your communication of October 5th, enclosing this check for $500? A. It is.

Mr. Stanchfield.— I offer that letter in evidence.

Mr. Hinman.— If you will let us look at it before it is marked, please?

Mr. Stanchfield.— Surely.

The letter was received in evidence and marked Exhibit M-26 of this date.

Mr. Stanchfield.— I will read the letter in reply.

Q. By the way, Mr. Elkus, did you transmit your letter enclosing the check, through the mail? A. That is my recollection. I did not mail it myself.

Q. And the answer was received through the mail? A. That is my recollection.

Mr. Stanchfield.— This letter reads as follows (reading):

"COMMITTEE ON FOREIGN AFFAIRS
HOUSE OF REPRESENTATIVES
OF THE UNITED STATES.
WASHINGTON, D. C.

NEW YORK, *October* 5th, 1912.

"Hon. ABRAM I. ELKUS, 170 *Broadway, New York City:*

"My dear Commissioner:

"Many, many thanks for your very kind letter of congratulations. I appreciate every word you say and all you have done.

"With best wishes, believe me, as ever,

"Sincerely your friend,

"WILLIAM SULZER."

Q. I suppose, Mr. Elkus, it did not escape your attention that there was no reference in the acknowledgment to the receipt of the check.

Mr. Marshall.— Wait a minute. I object to that.

The President.— Objection sustained.

Mr. Stanchfield.— That is all.

Cross-Examination by Mr. Marshall:

Q. Mr. Elkus, how close were your relations to Mr. Sulzer before he became Governor? A. I had known him for a number of years.

Q. You had known him quite intimately? A. No, fairly. I had known him, seen him from time to time.

The President.— They did not hear you.

The Witness.— I say I had seen him from time to time. I have known him about twenty years.

Senator Sage.— We cannot hear a word here of either the question or answer.

The President.— You will have to turn still more, counsel.

Mr. Brackett.— I might suggest that there is quite a buzz in the room, and that if they will keep quiet it will be a great deal easier.

The President.— I will have to again appeal to you to keep absolute quiet, because otherwise some members of the Court don't hear the testimony.

Mr. Parker.— Presiding Judge, the Senators say they think the difficulty is due largely to the noise of wagons passing over the pavement. Couldn't it be covered with tan-bark out there?

The President.— Yes, it could be, and if that will obviate the difficulty, it will be done.

Mr. Parker.— One of the Senators suggests to me he thinks that that is their trouble.

The President.— I will make an inquiry and see how practicable that is. Who was the Senator who made the suggestion?

Mr. Parker.— Senator Sage.

The President.— Senator Sage, if you will speak to me after recess time, we will endeavor to see what can be done in the matter.

Q. You wrote this letter in an entirely friendly spirit, of course? A. Surely.

Q. And you were concerned with the welfare of Mr. Sulzer? A. With his election and his welfare.

Q. Yes, both. Did you intend that he might not use a part of this money or the whole of this money which you sent him, for his living expenses, for instance?

Mr. Stanchfield.— That question is objected to. The witness had no conversation with Mr. Sulzer. The letter speaks for itself.

Mr. Marshall.— Conversation, I think, it has been ruled, has nothing to do with the question.

The President.— I think that question forms part of it. What intention did you have in sending him that check? It is not what your subsequent feelings are, witness, but what was your intent at the time you sent it.

Mr. Stanchfield.— To that question, if the presiding judge please, with all due respect, we object, upon the ground that the intent of this witness never communicated by direction or indirection to the recipient of that check as utterly inadmissible, incompetent and improper.

The President.— The previous ruling disposes of that.

Judge Hiscock.— Personally, and I think some of the other members of the Court agree with me, I have grave doubts about the admissibility of that evidence under such circumstances certainly as accompanied the transmission of this check; and yet I feel no particular objection to the ruling which has been made, and letting in the evidence, since there is no jury here to consider it, reserving, however, and not being in any way debarred the right to consider and discuss the rest of the question of the competency and of the effect of any such evidence as that when we come to the final consideration of the case.

Personally, I am perfectly willing that that course should be taken, except that I desire to reserve that right to discuss and question the effect of that evidence when we finally come to a decision.

The President.— It seems to me we should allow that testimony to be given.

Senator Brown.— Mr. President, I have found in public trials of this character that a departure from clear and well settled rules of evidence drags the trial out, and one violation of the rule leads to others. I have no idea that from any point of view this question can be competent, and I am therefore opposed to its being permitted.

The President.— Then, Senator Brown, it is better that you should call for a vote of the Court.

Mr. Marshall.— In order to avoid that question at this particular time, I will withdraw the question I have asked this witness.

Mr. Brackett.— No.

The President.— It is his question. He can withdraw it.

Mr. Marshall.— The question I desired to ask the witness has not been allowed, and I therefore have a right to withdraw that particular question.

The President.— Any further?

Mr. Herrick.— That is all, Mr. Elkus.

Mr. Stanchfield.— Presiding Judge, we beg leave now, because it is of great consequence, that this question should be settled once and for all time for the purposes of this trial, our motion to strike out the testimony of Mr. Schiff in the phraseology used by my colleague, Mr. Brackett.

That question, gentlemen of this Court, is going to touch upon and reach the testimony of practically every witness that has been called here. Representing the Board of Managers and conscious of the seriousness of this case, and actuated by the sole and only purpose and motive of doing equal and exact justice to this respondent within the legal rules of evidence, I insist we, representing the Board of Managers, have a right to know whether evidence is to be admitted, or standing upon the record showing what the veiled, concealed intent of some contributor to this campaign

fund was, or might have been, that intent formed not when he made the contribution, but formed weeks afterwards. We submit that testimony, either ought to be in or out of this case by a vote of the majority of the members of this court.

The President.— That motion has been disposed of once and the Court will not entertain its renewal, except upon the application of some member of the Court.

Mr. Brackett.— It was with a view of enabling some member of the Court to take the precise action that was indicated by the request of Judge Hiscock and of Senator Brown on this point, and to take a vote on it, if it was desired.

The President.— If it is in the testimony of every witness, it will arise when the next one comes, and you will have an opportunity.

Call the next witness.

Mr. Kresel.— Mr. Floyd.

The Clerk.— Mr. Floyd, you do solemnly swear that the evidence which you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer, as Governor of this State, shall be the truth, the whole truth and nothing but the truth, so help you God?

Mr. Floyd.— I do.

WEBB FLOYD, a witness called in behalf of the Managers, having been first duly sworn, in accordance with the foregoing oath, testified as follows:

Direct Examination by Mr. Kresel:

Q. Are you an officer of the Mutal Alliance Trust Company of New York city? A. I am.

Q. What office do you hold? A. President.

Q. Has one Louis A. Sarecky an account in that Trust Company? A. He has.

Q. Can you state for how long a time he has had that account? A. Since August 5, 1912.

Q. Since August 5, 1912? A. Yes, sir.

Q. And is it still running? A. It is.

Q. Have you produced a transcript of the account? A. Formerly, yes.

Q. Now, look at this paper, please, and state whether that is a correct transcript of the account from September 5, 1912, to December 31, 1912? (Counsel passes paper to witness.) A. (After examining) It is.

Mr. Kresel.— May I have that marked for identification?

Mr. Herrick.— Offer it in evidence now, if you want to.

Mr. Kresel.— Well, then I will offer it in evidence.

The President.— Admitted.

The transcript of the account was received in evidence and marked Exhibit M 26½, a copy of which will be found at the end of to-day's proceedings.

Judge Werner.— May we know what it is?

The President.— Yes, he will read the contents. He will read it to you, gentlemen, or state to you what the contents are. You better dispose of that before you go to any other.

Mr. Kresel.— Yes, sir. This is a transcript of the account and commences with a deposit — no, it commences with a balance as of August 31, 1912, showing —

Senator Griffin.— I can't hear.

Mr. Kresel.— Showing that on that day Sarecky had to the credit of this account —

Senator Griffin.— Mr. President.

The President.— Senator Griffin.

Senator Griffin.— I can't hear.

The President.— You will have to commence again, Mr. Kresel.

Mr. Kresel.— This transcript of the account shows that on the 31st of August, 1912, Sarecky had a balance to his credit of

$435; by October 1, 1912, he had to his credit $563.35. Beginning with October 1st the deposits run as follows: October 1st, $160. Can you hear me?

Judge Chase.— Face us.

Mr. Kresel.— October 1st, $208.13; October 5th, $160; October 8th, $890; October 11th, $1,275; October 15th, $3,350; October 19th, $1,010, and on the same day a deposit of $25. October 21st, $535; October 24th, $910; October 26th, $566.77; October 30th, $147.70; November 4th, $1,453.33; November 7th, $1,475; November 12th, $400; November 14th, $498.75; November 20th, $115.59; November 21st, $30.30; December 27th, $80; and December 31st, $372.93.

Mr. Brackett.— Give the total.

Mr. Kresel.— The total of the deposits between October 1st and December 31st was $14,066.85. On December 31st there was a balance to the credit of the account of $489.19. Now, is there anything else about it that you want to know?

(No response.)

Q. Now, Mr. Floyd —

Mr. Hinman.— Pardon me, Mr. Kresel. Will you state again what the balance was on December 31st?

Mr. Kresel.— $489.19.

Mr. President.— I don't believe the members of the Court heard the question. What was it the counsel asked?

Mr. Kresel.— The question was to state again what the balance was on December 31st.

The President.—And you answered what?

Mr. Kresel.— $489.19.

Senator Thompson.— Mr. President, I might suggest again that if the counsel for the respondent desire us to hear them, if they turn our way when they talk we hear them. They still persist in talking with their backs to us.

The President.— I have endeavored to impress it on them, but it is very difficult to get them to adhere to it literally, not unnaturally; they forget at times, being more accustomed to appearance in the ordinary courts of justice which are arranged differently.

Mr. Kresel.— May I proceed?

The President.— Yes.

Q. Now, Mr. Floyd, I show you the following deposit slips for the account of Louis A. Sarecky in your company: Deposit slip of October 1, 1912, deposit slip of October 5, 1912, deposit slip of October 8, 1912, October 11, 1912, October 15, 1912, October 19, 1912, two deposit slips —

Mr. Herrick.— You can put them all in evidence without taking the time. Give the numbers to the stenographers.

Mr. Kresel.— I just want to have the record show the dates.

Mr. Hinman.— That is better.

Mr. Kresel.— October 21, 1912; October 24, 1912; October 26, 1912; October 30, 1912; November 4, 1912; November 7, 1912; November 12, 1912; November 14, 1912; November 20, 1912; November 21, 1912; December 27, 1912; December 31, 1912; September 10, 1912, and September 30, 1912.

Q. Please look at those and see that they are the deposit slips and then we will put them in. A. Yes.

Mr. Brackett.— The dates having been given, can all of these be marked as one exhibit?

The President.— If it is just as convenient, yes.

The Witness.— There are twenty-one of the slips. They are all correct.

The twenty-one deposit slips offered in evidence and marked collectively as Exhibit M-27.

The President.— Have you stated to the Court what they are?

Mr. Kresel.— The deposit slip of September 10, 1912, contains a record of a deposit of one check for $93.60.

The deposit slip of September 30, 1912, contains a record of a deposit of one check for $34.75. The one of October 1, 1912, contains a record of a deposit of one check of $208.34, drawn by the Treasurer of the United States at Washington, D. C.

October 5, 1912, three checks, one of $100, one of $10 and one of $50, total deposits of $160.

The one of October 8, 1912, contains a record of seventeen separate items, all being checks, ranging in amount from $5 up to $100 and totaling $890.

The one of October 11, 1912, contains a record of eight deposits totaling $1,275, the first one is for $100, then there are two for $50 each, then one for $250, one for $25, another for $250, another for $50, and then $500.

The slip of October 15, 1912, contains a record of ten checks totaling $3,350. As to this.

Q. Mr. Floyd, I want to call your attention to the second item from the bottom of that slip, $2,500, and ask you whether that is a record of the deposit of the Schiff check which is now marked Managers' Exhibit 9. Please look at it? A. This was the only deposit on October 15th in the transcript of account. There was only the one deposit on that day.

By Mr. Brackett:

Q. Of $2,500? A. Only one check; that is the check.

Mr. Kresel.— Very well. The one of October 19, 1912, contains 15 items of checks and they are as follows: Checks of Peter Doelger, $250; check of Hugo Haupt, $10; check of J. E. Guder & Co., $25; Nelson Smith, $100; check of John Armstrong, $10; check of Morris Tekulsky, $50; check of Andrew F. Schafer, $40; check of James Hurley, $50; check of George W. Neville, $50; check of David Gerber, $150; check of William F. Carroll, $10; check of William B. Dowd, $15; check of Macgrane Coxe, $200; check of Samuel Bauman, $50; a total of $1,010.

On the same date there is another deposit slip of a check for $25.

On October 21st deposit slips show six items, all checks, totaling $535, as follows: A. Sterber, $100; W. Penney, $50; J. M.

Delahanty, $110; Leo Schlesinger, $200; E. Neufeld, $25; R. J. Cuddihy, $50.

On October 24th there are five items, totaling $910, as follows: S. Uhlman, $300; C. G. Friel, $10; W. H. Miller, $250; R. Forte, $250; W. E. Curtis, $100.

On October 26th there are seven items, aggregating $556.77, as follows: Henry Block, $100; Charles Thorsday, $100; Standard Finance Co., $25; J. M. Gardner, $200; John B. Judson, $100; T. Schlesinger, $30.26; Max Rosen, $11.51; making a total of $566.77.

On October 30th the following: Bird S. Coler, $100; M. F. O'Donoghue, $10; Theresa Schlesinger, $12.70; Samuel Peyser, $25; making a total of $147.70.

On November 4th the first item is cash, $100.

Q. Does that mean, Mr. Floyd, that there was deposited $100 in currency? A. It is opposite "Cash"?

Q. Yes. A. Yes, sir.

Mr. Kresel.— Then the following checks: Joseph W. Kay, $50; L. N. Rosenbaum, $100; J. B. Gray, $50; L. F. Doyle, $100; B. Simagin, $20; J. Temple Gwathney, $100; Thomas E. Rush, $500; W. E. Senkins, $25; C. J. Pinckney, $200; F. J. Cisna, $208.33; total, $1,453.33.

On November 7th, John F. O'Brien, $50; Daniel M. Brady, $100; Isaac Purdy, $250; John Standfast, $25; O. J. Gude, $100.

On November 12th there are three items, all drawn by the Treasurer of the United States, one for $125, another for $125, and one for $150.

On November 14th, one item, check of $500 drawn by Jacob A. Jacobs.

On November 20th, again a deposit in cash $100.

Q. Is that correct, look at that, Mr. Floyd? A. Yes, sir.

Mr. Kresel.— And checks, one of $5, one of $4.01 and one of $6.58.

On November 21st, two checks, one of $7.80 and one of $22.50.

On December 27th, $80 in cash.

On December 31st, $350 in cash and a check for $22.93.

Q. Now, Mr. Floyd, are you familiar with the signature of Louis A. Sarecky? A. I am.

Mr. Kresel.— Unless there is some question of his competency I won't go any further than that. Is there any question about it?

Mr. Marshall.— What is the question?

Mr. Kresel.— As to the question of whether he can identify Louis Sarecky's signature.

Mr. Stanchfield.— We desire, for the purposes of the record, to make an inquiry of counsel upon the other side. The Board of Managers have been for quite some period of time endeavoring to serve a subpoena upon Louis A. Sarecky and Frederick A. Colwell unsuccessfully. I noted the other day that Judge Herrick, speaking for counsel for the respondent, said that Louis A. Sarecky was available to the Managers at any time, but that they were not advised at that moment of the whereabouts of Mr. Colwell, but had known theretofore. Our inquiry of counsel for the respondent is whether Mr. Sarecky will be available for us on call or Mr. Colwell or either of them?

Mr. Herrick.— This is merely to make a record?

Mr. Stanchfield.— I want to know so that we can determine our course whether you will produce either or both of those witnesses, where we can subpoena them.

Mr. Herrick.— My information is entirely different from the gentleman's that the Managers or those that have been entrusted with the mission of bringing Mr. Sarecky made no effort, because Mr. Sarecky has been here in the city from time to time during the last month, and last week he advertised his appearance in the city of Buffalo.

Mr. Stanchfield.— Through you?

Mr. Herrick— Oh no, not through me, through newspapers. A publication of his own. We expect to have Mr. Sarecky here. Your inquiry is unexpected. I do not know where he is to-day. We certainly expect to have him as a witness.

Mr. Stanchfield.— Will you send for him and have him here say to-morrow morning.

Mr. Herrick.— That I will confer with my associates about.

Mr. Stanchfield.— Will you advise me of the determination?

Mr. Herrick.— I will.

Mr. Stanchfield.— One more question. Will you do the same with reference to Mr. Colwell.

Mr. Herrick.— I do not know as to Mr. Colwell's whereabouts at present. I expect to be informed, and we expect to have him as a witness.

Mr. Stanchfield.— Will you make the same inquiry with reference to him?

Mr. Herrick.— I will endeavor to do so.

Mr. Stanchfield.— And let us know sometime to-day?

Mr. Herrick.—Yes.

By Mr. Kresel:

Q. Now, Mr. Floyd, I show you the Schiff check for $2,500, which is now marked Managers' Exhibit 9, also the check of Bird S. Coler, check of J. Temple Gwathney, Thomas E. Rush, John F. O'Brien, Morris Tekulsky, E. C. Benedict, Charles P. Doelger, William J. Elias, Simon Ulman, William F. McCombs and A. H. Sterber, and ask you to examine the indorsement on the back of each of those checks and state whether those are the indorsements of Mr. Louis A. Sarecky? A. I am not speaking as an expert. They are the indorsements of Mr. Sarecky.

The Witness.— It is, or they are, the indorsements are Mr. Sarecky's.

Mr. Todd.— Just one moment. I want a mistake corrected about some of the numbers. There are two exhibits which are marked 26, and I want to call it to the attention of the stenographer before we get into a mix-up about it.

The transcript of the account of the Mutual Alliance Trust Company was marked Exhibit M-26½.

The President.— Now will you read, Mr. Stenographer, the last question to the witness and the answer. Read it to the members of the Court so they will understand.

The stenographer read the question and answer as follows:

"Q. Mr. Floyd, I ask you to examine the indorsement on the back of each of these checks, and state whether those are the indorsements of Mr. Louis A. Sarecky? A. I am not speaking as an expert; they are the indorsement of Mr. Sarecky."

Q. Now, Mr. Floyd, will you examine those checks again and state whether all of those checks were deposited to the credit of Sarecky in your trust company? A. They were.

Mr. Kresel.— Now, may I offer those as one exhibit for identification?

The President.— No objection?

Mr. Herrick.— No objection.

The Witness.— One of them has been marked.

Mr. Kresel.— I want to except from that offer the check of Mr. Schiff, which is already in evidence. I do not need to have that marked for identification.

The eleven checks offered for identification were received and marked as one exhibit, M-28, for identification.

Q. Mr. Floyd, have you produced a letter which was delivered to you by Mr. Sarecky during the month of October, 1912? A. I have.

Q. May I have it, please. A. (Witness produces letter.)

Mr. Kresel.— I offer that letter in evidence.

Mr. Hinman.— Let me see it.

(Letter passed to Mr. Hinman for examination.)

Mr. Hinman.— No objection.

Mr. Herrick.— No objection.

The President.— Admit it.

The letter offered in evidence was marked Exhibit M-29.

Mr. Kresel.— This letter is written on the stationery of the Committee on Foreign Affairs, House of Representatives, United States.

"En Route, *October* 22, 1912.

"*Mutual Alliance Trust Company:*

"Gentlemen.— This is to inform you that I have authorized my private secretary, Mr. Louis A. Sarecky, to endorse my name to any checks donated to my campaign fund, and to deposit same to his credit.

"Very truly yours,

"William Sulzer."

Mr. Kresel.— That is all.

The President.— Any cross-examination.

Cross-examination by Mr. Hinman:

Q. Referring to this letter, Exhibit M-29, which is the letter dated October 22, 1912, have you a present recollection of its having been delivered to you? Have you any present recollection as to whether or not that particular letter was delivered to you in person? A. I have.

Q. By whom was it delivered to you? A. (No answer.)

Q. What is your best recollection? A. An employee of the company.

Q. An employee of your company? A. Yes, sir.

Q. Have you any knowledge, any personal knowledge, as to how the employee of your company received this? A. It was delivered to him by Mr. Sarecky.

Q. How do you know that? A. I know that because it was told me at the time, and later I had some conversation with Mr. Sarecky with reference to it.

Q. Was that —A. (Interrupting.) He asked me if I had received the letter, and if it was in order.

Q. So, personally, you don't know when it was received; that is, you did not receive it when it was received there at the bank? A. I did not.

Q. Do you remember now who the employee was that delivered this letter to you? A. I do not.

Q. Do you remember now what position the person occupied at the time, who delivered this letter to you? A. I do not.

Q. Do you know whether this letter was delivered to the employee of the bank; that is, did you learn from him whether it was delivered in an envelope or not? A. It was in an envelope when I received it, directed to me.

Q. Have you that envelope? A. I have not.

Q. And do you know where that envelope is? A. It was destroyed.

Q. At the time? A. At the time.

Q. Do you know — have you any personal knowledge regarding the reason why this letter was delivered at that time? A. I have.

Q. Did you have any talk with anyone regarding its delivery or the transmitting of the letter before it was delivered? A. I did.

Q. With whom did you have that talk? A. Mr. Sarecky.

Q. There at your bank? A. At the bank.

Q. Do you know where William Sulzer was on the dates that this letter bears date? A. I do not.

Q. Did you have any communication, any conversation, with William Sulzer regarding this letter? A. I did not.

Q. Never at any time? A. At any time.

Q. So far as you know, has any employee or officer of your bank had any conversation with William Sulzer regarding this letter at any time? A. No one has.

Q. As to where this letter was written you do not know? A. I do not.

Q. By whom it was dictated, you know nothing, either by hearsay or otherwise?

The President.— He said that. You said the first knowledge you had of it was when it was given to you by this employee in your Trust Company?

The Witness.— Yes, sir.

Q. Referring now to these checks which have been offered in evidence —

Mr. Hinman.— Have they been offered in evidence?

Mr. Kresel.— Not yet. They were marked for identification. They have not yet been offered in evidence.

The President.— Hadn't you better offer them in evidence?

Mr. Kresel.— If it is more agreeable to do so, I will offer them in evidence now.

The President.—Admitted.

Mr. Kresel.— It will have to be marked separately.

Mr. Hinman.— I assume if your Honor please, that they —

The President.— A soon as they are marked, you will have your opportunity to be heard.

The checks heretofore received for identification as Exhibit M-28 for identification, are now received in evidence and marked respectively Exhibits M-28, M-30, M-31, M-32, M-33, M-34, M-35, M-36, M-37, M-38, M-39, copies of which will appear at the end of to-day's proceedings.

Mr. Hinman.— May I inquire where Exhibit No. M-29 is?

Mr. Marshall.— M-29 is the letter.

Mr. Hinman.— It can't be.

Mr. Kresel.— Yes, M-29 is the letter.

Q. And referring now to these checks which have been numbered from M-28 to M-39, inclusive, excepting Exhibit M-29, which is the letter, and which you have identified as checks which were deposited in your bank by Mr. Sarecky, Louis A. Sarecky, do you observe that on the backs —

The President.— One moment. If one of you gentlemen will assist your associate, by acting, it may be as messenger, but we will get along better. Now, if you will keep your stand.

(Referring to counsel's approach to the witness stand.)

Q. Do you observe that some of the indorsements thereon of the name of William Sulzer have been affixed with a rubber stamp? A. (After examining papers). I do.

Q. I hand you all of those exhibits, those checks, except Exhibit No. 26, and I ask you if the indorsement thereon of the name of William Sulzer on each of those checks is made, with a rubber stamp? A. Wherever it appears, yes.

Mr. Marshall.— Look on them and see, see on all of them.

The Witness.— It is not on all of them.

Q. I show you now Exhibit No. 36, and ask you if that is the only check of those that have been produced here this morning upon which the indorsement of the name William Sulzer appears to have been written with a pen? A. (Witness examines papers.) I think that is the only one; that is the only one here.

Mr. Hinman.— That is what I am speaking of.

Q. Take that Exhibit No. 36 if you will and tell us the date of the check and by whom drawn and the amount of it? A. Dated October 19th, $100; A. H. Storber.

Q. What date was that deposited in your bank? A. October 21st.

Mr. Marshall.— 1912?

The Witness.— 1912.

Q. And was credited to the account of Louis A. Sarecky? A. Correct.

Q. Just one other question. Were you, during the period covered by the Sarecky account, to which you have testified, engaged during any of the time in receiving deposits personally? A. No.

Q. Who was the employee of your bank who usually received the deposits at that bank during that period? A. Our teller and his assistants.

Q. What was the name of your teller during that time? A. Johnson.

Q. What was his first name? A. F. N.

Q. Is Mr. Johnson still with you? A. He is.

Q. What are the names of the assistant tellers who were employed there at the bank at that time, if you can give them? A.

Those departments have been changed since. They are two of the juniors.

Q. And do you know whether there has been any change? A. They are both still in the employ of the bank.

Q. Can you give the names? A. I cannot tell you at the moment.

Q. Have you any personal knowledge or recollection regarding the deposits by Sarecky in the bank; that is, who brought the various deposits when they were made to the bank? A. He brought them at times, and at times sent them by messenger.

Q. Can you give those names, or the names of any of those messengers who brought those deposits? A. I cannot.

Mr. Kresel.— Is that all?

Mr. Hinman.— That is all.

The President.— Anything on re-direct?

Mr. Kresel.— That is all.

Mr. Kresel.— Mr. Tekulsky.

Mr. Hinman.— There is one other question. I want to inquire of counsel if he had marked this morning as exhibits all the checks that he produced which have been deposited in Sarecky's account?

Mr. Kresel.— I have marked all that I have produced, yes.

Mr. Hinman.— May I inquire for the record whether the counsel has had marked all the checks that he has here that have passed through the Sarecky account?

Mr. Kresel.— No.

Mr. Hinman.— Let me inquire for the record whether counsel did not produce here 14 or 15 checks exhibited in the court and then after they had been marked for identification, and mark them in evidence, that some were not marked which had been exhibited?

Mr. Kresel.— No, that is not so, either. All I exhibited were marked.

Mr. Kresel.— Now, Mr. Tekulsky.

The Clerk.— You do solemnly swear that the evidence which you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer, Governor of this State, shall be the truth, the whole truth, and nothing but the truth, so help you God?

The Witness.— I do.

The Clerk.— What is your full name?

The Witness.— Morris Tekulsky.

MORRIS TEKULSKY, a witness called in behalf of the Managers, having been first duly sworn, in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Kresel:

Q. Will you try to speak loud enough for the gentlemen in the back rows to hear you? Where do you live, Mr. Tekulsky? A. 414 Central Park West, New York city.

Q. I can't hear a word you say? A. 414 Central Park West, New York city.

Q. That is better. And what is your business? A. Liquor business.

Q. Even the gentlemen in the front row can't hear what you say? A. Liquor business.

Q. And where is your place of business? A. 389 Sixth avenue.

Q. In the city of New York? A. City of New York.

Q. Is that a wholesale or retail liquor business? A. Retail.

Q. And for how long have you been in the liquor business? A. 32 years.

Q. Are you now officially connected with what is known as the Liquor Dealers' Association? A. I am not.

Q. You have been officially connected with that organization?

Mr. Marshall.— I object to that as immaterial.

The President.—Well, I suppose that is introductory, isn't it?

Mr. Kresel.— It is, certainly.

The President.— He can show that. He wants to show contributions connected with the Association.

Mr. Marshall.—As far as that is concerned, there is no allegation in the articles of impeachment with regard to any contribution by the Liquor Dealers' Association or by the witness Tekulsky.

The President.— Is this with reference to some contribution made?

Mr. Kresel.— It is.

The President.— The witness may answer the question.

Mr. Kresel.—What is the last question?

(The stenographer read the last question as follows): "You have been officially connected with that organization?"

The Witness.— I have.

Q. And were you the president of it? A. I was.

Q. Do you know William Sulzer who is now the Governor? A. I do.

Q. Did you know him in the month of October, 1912? A. I did.

Q. And for how long prior to that month had you known Mr. Sulzer? A. About 23 years.

Q. And you were very friendly with him? A. I was.

Q. Quite intimate with him? A. Yes.

Q. Do you remember seeing Mr. Sulzer on the 16th of October, 1912? A. I do.

Q. Where did you see him on that day? A. At Tammany Hall.

Q. That is in the city of New York? A. It is.

Q. Was there a meeting in progress there at that time? A. There was.

Q. And were you attending the meeting?

Mr. Marshall.— I object to this leading form of question.

Mr. Kresel.— I withdraw it. I did not know there would be objection to that.

Mr. Marshall.— I want to raise the real question presented here because we are wasting a lot of time on unnecessary inquiries if this testimony is not competent.

Mr. Kresel.— I think it ought to wait until we come to it.

Mr. Marshall.—We can cut the Gordian knot I hope without going through a lot of preliminary discussion. As I understand it, this witness is called for the purpose of having it proven that he made a contribution and that contribution was not —

Mr. Stanchfield.— I object to counsel arguing a legal question until the question is before the House.

The President.— If they object, you will have to proceed in an orderly manner.

Mr. Marshall.— I am trying to save time.

Q. What were you doing at Tammany Hall on that day? A. I went to a ratification meeting.

Q. And was that being held there in the evening of that day? A. It was.

Q. And was Mr. Sulzer one of the speakers there? A. He was.

Q. Now then, will you tell the Court what occurred between Mr. Sulzer and yourself on that occasion?

Mr. Marshall.— May I ask the Court if this is not the proper time to interpose my objection?

The President.— Yes, now what is your objection.

Mr. Marshall.— My objection is that under the articles of impeachment, which govern us here just as an indictment would govern us if this were an indictment, there is absolutely no allegation which presents as ground for complaint the fact that a contribution was made by this witness or by any organization which he may represent, which was not included in the report or statement filed in the Secretary of State's office, or which was not accounted for, or which was appropriated by the defendant or respondent to his own use; and that therefore any evidence with regard to it is immaterial and incompetent.

The first article alleges that the respondent, having been elected, being required by the statute to make a certain statement setting forth his receipts and expenditures in connection

with his candidacy, filed a statement and indicated that he had received certain sums of money from 68 contributors and had expended certain sums of money for expenses; and that the said statement thus made and filed by said William Sulzer as aforesaid was false and was intended by him to be false and an evasion and violation of the statutes of the State, and the same was made and filed by him wilfully, knowingly and corruptly, it being false in the following particulars among others, to wit: It did not contain the contributions that had been received by him and which should have been set forth in said statement, to wit, naming these:

Jacob Schiff, Abram I. Elkus, William F. McCoombs, Henry Morgenthau, Theodore W. Meyers, John Lynn, Lyman A. Spaulding, Edward F. O'Dwyer, Frank V. Strauss Company, John W. Cox, John T. Dooling, and not including this nor any organization which he represented.

That in making and filing such false statement as aforesaid the said William Sulzer did not act as required by law but did act in express violation of the statutes of the State and wrongfully, wilfully and corruptly and so forth.

The second article says that he made an affidavit in which he wilfully, knowingly and corruptly made a false statement, which was claimed to constitute a perjured statement in that it did not contain the names as contributors of the same individuals whom I have mentioned, they saying that it was wilfully, knowingly and corruptly false in the following particulars, to wit, it did not contain the contributions that had been received by him and which should have been set forth in said statement, to wit, those of the individuals I have just named.

The sixth article is the article which relates to the charge of larceny and states that he stole the moneys and checks of Jacob A. Schiff, Abram I. Elkus, William F. McCoombs, Henry Morgenthau, John Lynn, Theodore W. Meyers, Lyman A. Spaulding, Edward F. O'Dwyer, John W. Cox, the Frank V. Strauss Company and John T. Dooling and cash aggregating $32,850.

Of course, the purpose of these articles of impeachment, as it is also the purpose of an indictment is to give notice to the persons charged with the commission of the offense, of the nature and

character of the charges made against him so that he may have an opportunity to investigate the matters, to prepare for his defense and to present such explanatory matter as is required or deemed desirable.

It is contemplated by the provisions of the Code of Criminal Procedure that there shall be an interval of time not less than twenty days from the time of the filing of the articles and the giving of the notice, as to the character of the charges made so, presumptively, as to permit and enable the person charged with these various matters to prepare himself and to defend himself.

We are now in the position of having presented for the first time upon this hearing, more than thirty days after the filing of the articles, without any additional articles of impeachment having been presented, with a charge which we have not been notified to defend against. Upon the theory of our opponents they might practically change the entire nature of the case. They might entirely be silent as to proof with regard to the individual transactions which are set forth in the articles of impeachment and come here for the first time upon this hearing and present to us for consideration the names of individuals who were not suggested or not specified in the articles. A trial under such circumstances would be a mere misnomer. The articles of impeachment would be deceptive and misleading in the same way that an indictment would be misleading if it were charged that the defendant had committed larceny in stealing the goods of John Smith, and when the trial came in, would attempt to show that the goods stolen were the property of Richard Roe, or John Robinson, and so also with regard to any of these other matters.

The purpose and intention of the framers of the Constitution and also of those who framed the Code of Criminal Procedure was to have articles of impeachment which would be specific and which would give notice of the charges which the respondent is called upon to meet. Not only is that so, but it is for the purpose of indicating to the respondent what charges were considered by the Assembly as the charges which the respondent was to be called upon to meet; non constat, they might have determined in the Assembly, or a majority of the Assembly might have determined that matters which relate to Mr. Tekulsky or Mr. Smith or Mr.

Robinson were not proper charges to be considered by the Senate upon the trial and that the charges which were to be considered were the charges which related to Mr. Schiff and Mr. Morgenthau and specific individuals.

In other words, this is merely an attempt to recast the articles of impeachment, to recast an indictment upon the very trial and to enable this tribunal, which is only a Court, to assume the functions of a grand jury or of an accusing body.

It has been held in the cases to which I called the attention of the Court on a previous occasion, that the articles of impeachment and an indictment are for all practical purposes the same; that there can be no more an amendment of the articles of impeachment upon the trial than there can be an amendment of an indictment upon the trial. It is only the Assembly that can change the charges or amend them. The Senate cannot do it. The Court of Impeachment cannot do it, and certainly, by attempting on such an occasion as this, by asking questions of a witness, even without the amendment of the articles of impeachment it cannot be reasonably expected of the defendant that he should be called upon to meet charges which are not included within the articles of impeachment; which have not been acted upon by the Assembly; which have not been made the subject of an amendment; and thus by indirection to accomplish the very thing which the courts have held cannot be done directly.

Mr. Stanchfield.— If the Presiding Judge please, and members of this tribunal, the objection raised by counsel for the respondent is of quite more than passing consequence, as will appear from a bald bare statement of the contention made.

These charges upon their face allege certain specific amounts of money were received by the respondent for campaign purposes and that they do not appear in the statement filed by him under the statute, subsequent to his election.

The Board of Managers have secured and we are now prepared to prove a large number of contributions vastly in excess of those that appear upon the face of the charges, were received by the respondent for campaign purposes and that those amounts do not appear in the statement filed by him subsequent to his election.

The suggestion was thrown out by one of the counsel for the Managers in his opening statement to you that we should make this proof. Therefore, not only counsel upon the other side, but members of this Court are familar with that contention.

There is the strongest human reason of which all men familiar with political affairs are cognizant as to the motives actuating a candidate for office for not desiring a particular contribution, such as the one involved in this controversy, to be opened up to the public gaze. Now, in all the motions that have been addressed to your consideration, challenging, first, the competency of certain members of this tribunal to sit, second, the jurisdiction of the Court as a whole, third, the impeachability of all offenses charged in the impeachment, but none of you as yet has heard any question raised as to the sufficiency, adequacy or completeness as matter of form, of these charges. That question comes before us for the first time now. If the gentlemen upon the other side claim that they are taken by surprise, as Mr. Marshall in his argument would indicate, and that they are not prepared to meet the line of proof that we now tender, his remedy in this tribunal is not to say you gentlemen cannot amend, the Assembly must serve additional charges; his remedy is to follow the decisions in impeachment trials that have gone before us, and ask at the hands of this court that they compel the Board of Managers to render unto them a bill of particulars of these charges. There is authority for the proposition, there is precedent in the books, and if they make that motion, we will meet it when we come to it. So much for the question as to whether it has been raised before. There is no question here as a matter of competency, as a matter of law, absolute, strict, rigid law, but what this evidence is admissible.

We charge here a wilful, a corrupt, intent upon the part of the respondent to file a statement of his receipts and expenditures that was violative of law; that he did it knowingly, that he did it intentionally; and as part of that statement we allege there were certain specific items enumerated by Mr. Marshall that did not appear in that filed statement of the respondents. Upon the face of the charge, we say, it being false in the following particulars among others, to wit: Therefore, as a matter of technical pleading,

these people were advised that the Board of Managers were not limited to the items that appear upon the face of these charges. But if this presiding judge please, going back of the form of the pleadings, ignoring for the moment the question as to whether or no these charges be sufficient upon their face or otherwise, we claim that under the law of the State as adjudicated by the highest tribunal in the State, the competency of this evidence and its admissibility is not an open question. Upon the contrary, it is a closed door. And we have the right to prove that the respondent received and failed to account for other items than those that appear upon the face of these charges, upon the broad ground that the reception of those other moneys not spread upon these charges is part of a common purpose, a common scheme, running through the entire conduct of this respondent with reference to the filing of this statement.

I can make, perhaps, no more lucid or clear enunciation of our position than to read an excerpt from the People v. Dolan, in the 186th N. Y., in which Mr. Justice Werner wrote for the Court as follows:

> "They must" — that is this class of evidence — "must be so connected as parts of a general scheme or they must be so related to each other as to show a common motive or intent running through them.
>
> "It is true that the evidence of this general plan or scheme tended to show the defendant guilty of other crimes, but that, as so very aptly stated by Judge Cooley in a Michigan case, is one of the misfortunes of the defendant's position."

Who will be heard to say that if an accusation of grand larceny be made against a defendant upon the ground that he has obtained property by means of false and fraudulent representations that the district attorney upon the trial of such an action is not permitted to prove contemporaneous acts similar in nature and similar in character? Although, of course, as is suggested by my colleague, not pleaded upon the face of the indictment.

That is the general situation that obtains here. We charge a crime, and an intent upon the part of the respondent to parade

for the public gaze certain itemized statements that appear in the papers he filed under oath as containing a list of all the contributors to his political campaign of small amounts from obscure sources that would not attract attention, and that by a scheme, a plan, he omitted from that statement amounts that came from Wall street, as identified in the person of Mr. Schiff, of amounts that came from the liquor interests, as represented in the person years ago of Mr. Tekulsky, of amounts that came from brewers, from all sources, where he thought the receipts of those moneys might reflect in any way upon his political future or be the subject of criticism or cavil or debate, those amounts were sedulously, deliberately, omitted by design, by intent, by this respondent from those statements, and therefore we claim that as bearing upon the fitness of the man, that as bearing upon the truth of these charges, as showing this corrupt, wilful, deliberate intent, that renders this man unfit to occupy the place that he at present fills, we have the right to show that in numberless other instances not appearing upon this record, he has deliberately failed, intentionally failed, to file a statement of his receipts. I might, perhaps, have concluded that with the statement, as is suggested by one of my associates, that one of his defenses was and is that these omissions were in the nature of a mistake, and that they were done without a guilty intention.

Mr. Marshall.— May it please the Court, this is purely and solely a question of pleading and proof under the pleading. When the proper time comes to sum up this case, we will be prepared to do that. I shall try to discuss this question as a question of law and not introduce into it extraneous matter, which is not proper to be considered before a judicial tribunal. Counsel has said that in the terms of this article I it is stated that the report was willfully, knowingly and corruptly made, it being false in the following particulars among others, to wit, but the words " among others " do not meet the defect in pleading which we are here considering, because it is specific, it did not contain contributions that had been received by him, and which should have been set forth in said instrument, to wit, naming the persons, naming the amount of the contributions. If there were other defects, they

must be set forth in the indictment, in the articles; it cannot be left to the district attorney or to the impeachment managers to say that there may be something besides that which they have specified which might be a ground for stating falsities; indictments cannot be carried in the hat of a district attorney nor in the minds of impeachment managers. Charges must be set forth fully, completely. Counsel says we might ask for a bill of particulars. It was not for us to ask for a bill of particulars. They are bound in their articles to furnish us with the statement of facts constituting the wrongful act, the crime, the impeachable offense. You might as well say in any case where there is a defective indictment, that the person charged with the commission of crime could eke out the insufficiency of the indictment by asking for a bill of particulars or by going back and asking that the case be sent back to the Grand Jury, or in this case to the Assembly, for the purpose of having a proper indictment framed or proper articles of impeachment framed. They have furnished us their bill of particulars in these articles of impeachment. It was their duty to show us what the facts are on which they claim that we have committed a crime or a wrongful act, or an impeachable offense. The charge which we are called upon to meet is the charge of the Assembly, acting by a majority of all the elected members of the Assembly, and not otherwise, and it would be contrary to the spirit of the law and of the Constitution if the Board of Managers or counsel to the Board of Managers, might be considered as a substitute or the delegate of the constitutional body which alone can find charges or present to us the articles of impeachment. Counsel has said that it is elementary that you may prove other acts, other crimes, for the purpose of showing intent. It is true that there are certain exceptions to the general rule that you can only be called upon to meet those particular offenses which are charged in the indictment. The law upon that subject has been stated with wonderful clearness and comprehensiveness in the monumental opinion of Judge Werner in People v. Molineaux, in the 168 N. Y. Reports, indicating that the rule is, the primary principle is, that a man charged with crime can only be called upon to meet that particular charge which is set forth in the indictment, and that he is not called upon to meet any

other charge, and that evidence tending to show the commission of any other crime, even though it be a similar crime, is incompetent. Will my friend claim for a moment that upon an indictment for larceny committed by A for taking the property of B, that you can show that A has committed twenty other larcenies, even though they may be contemporaneous larcenies, or that A has committed twenty other burglaries or twenty other murders? Why, in the Molineaux case they tried to show for the purpose of indicating that it was Molineaux who committed the crime which was charged against him, that he committed similar other offenses, but the purpose of indicating that the crime was committed by one and the same person, and yet the Court of Appeals held that that proof was not competent, because it violated the fundamental rule of justice and fairness which underlies our whole system of criminal law. There are, however, some exceptions. Undoubtedly there are. But this is not such a case. Counsel has cited People v. Dolan in 168 N. Y. But that was a case of forgery and the whole principle of that case, and the whole ratio decidendi of that case was summed up in a few words which are contained in the opinion of Judge Werner on page 9 of the Opinion, where he says that "a man might think," quoting from Judge Peckham in People v. Sharp (107 N. Y. 467), "the money he passed was good, and he might be mistaken once or even twice, but the presumption of mistake lessens with every repetition of the act of passing money really counterfeit, the latter observation very tersely states a rule that is as applicable to prosecutions for forgery as to cases for passing counterfeit money."

That was all that was decided in the case of People v. Dolan, that was just referred to. There are also other cases which are referred to in the opinion of Judge Werner in the Molineaux case that where there is an indictment of obtaining goods on false pretences that it is competent to show that contemporaneously goods were obtained on similar pretences from other people for the purpose of indicating the intent, the general purpose in connection with that transaction.

Now, again citing authorities, I call attention to the case of People v. McLaughlin, 150 N. Y., which was an indictment against a police inspector for extortion. The indictment charged

extortion from some particular individual, A, B or C. In the trial evidence was allowed to show that he had also committed extortion by taking money under like circumstances from C, D or E, who were ward men; and the Court of Appeals finally held, when the question came before it, that that evidence was incompetent and would not be received and reversed a conviction on the ground that the Court had committed error in allowing that evidence. Now, how is it that this case differs from that in any respect? Here is a charge that there had been committed a wrongful act, failing to make proper report, and that that report was improper in these particulars; and that there is another charge of perjury in that perjury was committed in respect to these particulars, and there is a crime of larceny in that the larceny was committed in regard to these particulars. And yet, now they are trying to show that instead of their having been committed these larcenies which are set forth in article VI, that there were five, six, or seven or eight, I don't know how many other larcenies committed with regard to other individuals which are not mentioned or specified in the articles of impeachment; that there was not only committed perjury in the respect indicated in this charge, setting forth the perjury, but there were other perjuries in respect to other persons or other things, and so far as the false report was concerned, it was not false in this particular specified but in other particulars.

We are, therefore, transforming this case from that which we have been invited to try; we are transforming the charge from that which the Assembly found into one which my friends are now seeking to find and to have tried here under these extraordinary circumstances, and so far as the statement is concerned, that it is alleged that among other things there have been — it was false in these particulars which, among others, is only to be found in the charge with regard to the report; it is not to be found in the charge with regard to perjury; it is not to be found in the charge with regard to larceny; it is confined merely to that first provision.

But independent of that, taking this case upon its broad aspect, in the interest of fairness and justice I assert that it would be a violation of our rights if we were now called upon to go into

testimony with regard to any matters except those which we were invited to go to trial upon by the articles of impeachment which have been here presented.

Mr. Stanchfield.— If the Presiding Justice please.

Senator McClelland.— I would like to ask a question of information.

Mr. Marshall.— Certainly.

Senator McClelland.— Are you sure that the McLaughlin case —

The President.— Senator McClelland.

Senator McClelland.— Are you sure that the McLaughlin case was not decided upon the ground that no crime, upon the evidence, had been proven against the defendant-appellant, and that he was discharged, and no subsequent — absolutely discharged under the decision of the Court of Appeals and no trial subsequently had?

Mr. Marshall.— Senator, the only question I am now considering is what the Court decided. I know the reverse was based upon the ground of the competency of the testimony. Mr. Fox was — one of my associates — as I recollect, was one of the counsel in the case and can give his personal recollection of the matter. I could send for the report, but I am very sure that that is the proposition which was there, and it was also, as I recollect it, reviewed together with all the authorities bearing upon the subject, in the opinion of Judge Werner in the Molineaux case, to which I have referred.

Mr. Stanchfield.— If the Presiding Judge please: In the warmth and zeal of this legal discussion we must not overlook the fact that the same strictness does not obtain upon trials for impeachment that would obtain in a criminal court in the trial of an indictment, and there is no —

Mr. Marshall.— It is not.

Mr. Stanchfield.— Pardon me, but it is true and it has been announced in a great many cases.

Now, less there should be the slightest misgiving in the mind of any member of this Court as to what the Court of Appeals of this State have held I will, for the purpose of refreshing the recollection of all the members of this Court, read in detail a brief decision of Mr. Justice Werner in the Molineaux case. I read from page 297:

> "There are cases in which the intent may be inferred from the nature of the act. There are others where wilful intent or guilty knowledge must be proved before a conviction can be had. Familiar illustrations of the latter rule are to be found in cases of passing counterfeit money, forgery, receiving stolen property and obtaining money under false pretenses. An innocent man may, in a single instance, pass a counterfeit coin or bill. Therefore, intent is of the essence of the crime, and previous offenses of a similar character by the same may be proved to show intent. So in a case where the defendant is charged with having received stolen property, guilty knowledge is the gravamen of the offense and scienter may be proven by other previous similar acts. In cases of alleged forgery of checks, etc., evidence is admissible to show that at or near the same time that the instrument described in the indictment was forged or uttered the defendant had passed, or had in his possession, similar forged instruments, as it tends to prove intent. On the trial of an indictment for obtaining goods by false representations, similar representations made by the defendant to creditors, from whom goods had been previously purchased by him were held admissible to prove intent. It will be seen that the crimes referred to under this head constitute distinct classes in which the intent is not to be inferred from the commission of the act and in which proof of intent is often unobtainable except by evidence of successive repetitions of the act."

The President.— Now, counselor, I don't think you should open the general re-argument.

Mr. Stanchfield.— I am not going to. Just to recapitulate — I am not going over my original argument. The contention here is

that these transactions, a hundred or more in number, constituted a common purpose, a common scheme, and does not, upon the part of this respondent, to display certain contributions and veil and conceal others. I concede that the failure to report one contribution might be an accident; the failure to report two contributions might be a coincidence; the failure to report a hundred is crime.

The President.— My opinion is that this evidence should be admitted. I agree perfectly with the contention of the counsel for the respondent that there can be no amendment made in an impeachment trial that would bring in a new and different offense because the sole power of impeachment is in the Assembly. We can only try in this Court offenses which the Assembly have presented as grounds for the removal of the person impeached. But when you look at this article — the first and second only, the gist of those articles is a single offense. It is the falsity of a particular statement or return. Now, it does enumerate respects in which it is false, and it may be possible as to those articles you should not go beyond it as to the question of whether the report was false in other respects. But the gist of that article is the scienter, the knowledge or intention to make a false report. And it seems to me, within the authorities, proof of similar acts at the time or about the time might be competent evidence.

There is, later than any decision that has been presented here, a decision of this Court from which I dissented, which was the opinion of a majority of the Court — and I am not prepared to say without reflection, that I am convinced that they were wrong and I was right. That was a forgery case. It is true a knowledge in forgery cases of the forgery of similar instruments may be admitted into evidence, but that was a technical forgery. It was a forgery of a notary public in failing, or in making a false statement to an acknowledgment to a deed that somebody had appeared before him and acknowledged. Still there that was a fictitious person or it was an impersonation by another party than that which the deed purported to be signed by and which he had known before, and it was held by the Court that similar acts with different persons extending over a period of some year

and a half, were competent on this ground: That a man might have been deceived as to one case or as to two cases, but he hardly would be deceived as to fifty.

I do not see where the logic of that case is not applicable to the case before us. The sixth article — I am not prepared that this may not be proved under the terms of the sixth article — the terms of the sixth article alleged a conversion or stealing of certain checks, and then it concludes, and cash amounting to thirty odd thousand dollars. Of course, the respondent was entitled to a fair intimation of what those sums were, and if they had asked for a bill of particulars of that article it might have been granted, but the respondent has not done anything of the kind.

Of course, this is not to be construed with the absolute strictness of an indictment in a criminal case. If I were sitting in the Court of Oyer and Terminer and that was presented, it would not be allowed. It does not matter particularly who was the owner of the property; but my notion is that articles of impeachment are not to be construed and judged in the same way that you would articles of indictment. They ought of course to conform to the requisites of substantial justice. They should inform the defendant fairly what is to be charged against him, but I do not think that it is to be construed, as already said, to be construed with the specification, the nicety and refinement that is requisite in a criminal case.

I hope, as this will come up often, that someone will demand a vote on this ruling. I rule the testimony is admissible.

Judge Collin.— Mr. Presiding Judge, in conformity with the intimation or the request of yourself, I move that a vote be taken now upon the question before the Court.

The President.— Does any gentleman wish to discuss the question? Does any member of the Court wish to discuss it?

(No response.)

The President.— Call the roll, Mr. Clerk.

The Clerk.— Senator Argetsinger.

Senator Argetsinger.— Mr. President, I don't wish a majority of this Court to deny me every scintilla of evidence that may give me an opportunity of judging this case.

Judge Collin.— Mr. Presiding Judge, may I ask just what the question is that we are voting upon. Is it that your ruling is to be sustained —

The President.— I have ruled that the testimony is admissible. Do you vote it inadmissible, Senator Argetsinger?

Senator Argetsinger.— Admissible.

The Clerk.— Judge Bartlett.

Judge Bartlett.— I vote that the testimony is admissible for the reasons assigned by the Presiding Judge with which I fully agree.

The Clerk.— Senator Blauvelt.
Senator Blauvelt.— Admissible.

The Clerk.— Senator Boylan.
Senator Boylan.— Admissible.

The Clerk.— Senator Brown.
Senator Brown.— Aye.

The Clerk.— Senator Bussey.
Senator Bussey.— Aye.

The Clerk.— Senator Carroll.
Senator Carroll.— Aye.

The Clerk.— Senator Carswell.
Senator Carswell.— Admissible.

The Clerk.—Judge Chase.
Judge Chase.— Aye.

The Clerk.— Senator Coats.
(No response.)

The Clerk.— Judge Collin.
Judge Collin.— Aye.

The Clerk.— Judge Cuddeback.
Judge Cuddeback.— Aye.

The Clerk.— Judge Cullen, President.
The President.— Aye.

The Clerk.— Senator Cullen.
Senator Cullen.— Aye.

The Clerk.— Senator Duhamel.
Senator Duhamel.— Aye.

The Clerk.— Senator Emerson.
Senator Emerson.— Aye.

The Clerk.— Senator Foley.
Senator Foley.— Aye.

The Clerk.— Senator Frawley.
Senator Frawley.— Aye.

The Clerk.— Senator Godfrey.
Senator Godfrey.— Aye.

The Clerk.— Judge Gray.
(No response.)

The Clerk.— Senator Griffin.
Senator Griffin.— Aye.

The Clerk.—Senator Heacock.
Senator Heacock.— Aye.

The Clerk.— Senator Healy.
Senator Healy.— Aye.

The Clerk.— Senator Heffernan.
Senator Hefferman.— Aye.

The Clerk.—Senator Herrick.
Senator Herrick.— Aye.

The Clerk.— Senator Hewitt.
Senator Hewitt.— Aye.

The Clerk.— Judge Hiscock.
Judge Hiscock.— Aye.

The Clerk.— Judge Hogan.
Judge Hogan.— Aye.

The Clerk.— Senator McClelland.
Senator McClelland.— Aye.

The Clerk.— Senator McKnight.
Senator McKnight.— Aye.

The Clerk.— Senator Malone.
Senator Malone.— Aye.

The Clerk.— Judge Miller.
Judge Miller.— Aye.

The Clerk.— Senator Murtaugh.
Senator Murtaugh.— Aye.

The Clerk.—Senator O'Keefe.
Senator O'Keefe.— Aye.

The Clerk.— Senator Ormrod.
Senator Ormrod.— Aye.

The Clerk.— Senator Palmer.
Senator Palmer.— Aye.

The Clerk.— Senator Patten.
Senator Patten.— Aye.

The Clerk.— Senator Peckham.
Senator Peckham.— Aye.

The Clerk.— Senator Pollock.
Senator Pollock.— Aye.

The Clerk.— Senator Ramsperger.
Senator Ramsperger.— Aye.

The Clerk.— Senator Sage.
Senator Sage.— Aye.

The Clerk.— Senator Sanner.
Senator Sanner.— Aye.

The Clerk.— Senator Seeley.
Senator Seeley excused.

The Clerk.—Senator Simpson.
Senator Simpson.— Aye.

The Clerk.— Senator Stivers.
Senator Stivers.— Aye.

The Clerk.—Senator Sullivan.
Senator Sullivan.— Aye.

The Clerk.— Senator Thomas.
Senator Thomas.— Aye.

The Clerk.— Senator Thompson.

Senator Thompson.— Mr. President —

The President.— Senator Thompson.

Senator Thompson.— I agree with the ruling of the Presiding Judge for the reasons specified by him and for the additional reason that in article VI of the specifications of the articles of impeachment I find the charge that various persons contributed and delivered money and checks representing money to the said William Sulzer, and it simply limits in the third paragraph that, among such money and checks thus stolen were the following, and I do not believe they were limited to any of the transactions mentioned in Article VI. I vote aye.

The Clerk.— Senator Torborg.
Senator Torborg.— Aye.

The Clerk.— Senator Velte.
Senator Velte.— Aye.

The Clerk.— Senator Wagner.
Senator Wagner.— I vote aye on the grounds stated by the Chair.

The Clerk.— Senator Walters.
Senator Walters.—Aye.

The Clerk.— Senator Wende.
Senator Wende.— Aye.

The Clerk.— Judge Werner.
Judge Werner.— Aye.

The Clerk.— Senator Wheeler.
Senator Wheeler.— Aye.

The Clerk.— Senator White.
Senator White.— Aye.

The Clerk.— Senator Whitney.
Senator Whitney.— Aye.

The Clerk.— Senator Wilson.
Senator Wilson.— Aye.

The Clerk.— Fifty-five ayes.

The President.— Mr. Clerk, announce the vote.

The Clerk.— Fifty-five in the affirmative.

Mr. Brackett.— No negative?

The Clerk.— No negative.

The President.— Gentlemen, the hour of adjournment has now arrived. Crier, adjourn Court.

The Crier.—Hear ye, hear ye, this Court will now take a recess until 2 o'clock this afternoon.

Senator Murtaugh.— Mr. President, will the Clerk announce that all the attendants and orderlies that have charge of the galleries meet in the Judiciary room immediately after the adjournment?

Thte President.— If I recollect right, the Senator himself is one of a Committee on whom that duty is partially devolved.

Senator Murtaugh.— The Committee on Rules wishes to meet the orderlies immediately after the adjournment in the Judiciary room.

Mr. Brackett.—And the witnesses will of course attend.

Thereupon, at 12:30 o'clock P. M., a recess was taken until 2 P. M.

AFTERNOON SESSION.

PRESENT:

Same as heretofore.

APPEARANCES:

Same as heretofore.

MORRIS TEKULSKY resumes the stand.

Direct examination continued by Mr. Kresel:

Q. Now, Mr. Tekulsky, will you state to the Court what you did at Tammany Hall that evening?

The President.—What you did with reference to the respondent here, Sulzer, in giving him money or any conversation about it? A. When he got through making his speech I walked downstairs with him, and I said to him, "Here is a little contribution to your campaign fund, and I hope it will do you good." I handed him a check, and he said, "Thank you." That was all the conversation we had.

Q. Now, I show you Managers' Exhibit 32, and ask you whether that is the check which you handed to him? A. It is.

Mr. Kresel.— That is all.

Judge Werner.— May the check be read, Mr. President?

Mr. Kresel:

"NEW YORK, *Oct.* 16, 1912.

No. .....

THE GARFIELD NATIONAL BANK,

Fifth avenue and 23rd street.

Pay to the order of William Sulzer, $50.

Fifty ——————————— Dollars.

(Signed) MORRIS TEKULSKY."

Indorsed on back,

WILLIAM SULZER.

L. A. SARECKY.

Pay to the order of The National Bank of Commerce, Oct. 19, 1912. The Mutual Alliance Trust Company of New York,

35 Wall street. Received payment through the New York Clearing House, Oct. 19th, 1912. Receiving Teller. Indorsements guaranteed, National Bank of Commerce in New York.

The President.— That is the check that went through the Alliance Trust Company.

Mr. Kresel.— It did, sir.

The President.—And deposited in Sarecky's account?

Mr. Kresel.—Yes, sir.

Cross-examination by Mr. Hinman:

Q. In November, 1912, were you the president of the Liquor Dealers Association? A. I was not.

Q. And you had not been such president for how long? A. A good many years.

Q. What was this ratification meeting that was held in Tammany Hall on October 16, 1912? A. A general Democratic ratification meeting that is held every year.

Q. How large a meeting was it?

The President.— Is it worth while to go into that?

Mr. Hinman.— I don't care about that particularly.

Q. When you went downstairs with Mr. Sulzer, as you have stated, what room did you go in; did you go in some room? A. No, we went in no room.

Q. Was the talk which you had with him as you went down the stairs? A. It was.

Q. Were you and he alone, or were there others going down at the same time? A. He and I were alone; there might have been others on the stairs, but not with us.

Q. He went down as the meeting broke up, you went down? A. No, it was after he got through speaking.

Q. That is, Governor Sulzer, then Congressman Sulzer, had made a speech there at the meeting? A. He did.

Q. And this was immediately succeeding his speech? A. It was.

Q. Did you make any particular note or pay any particular attention at the time to just what conversation you had with Governor Sulzer with reference to the check? A. I made no note of it, only just what I just stated.

Q. The conversation that you had at that time, has it been called to your attention since the time when you had it that night of the 16th of November, 1912, until recently? A. No.

Q. The matter I assume, that is, the conversation had passed from your mind until recalled lately? A. That is right.

Q. As to what particular language you used or just the words you used, I don't suppose you can be absolutely positive? A. That is just about what I said; what I repeated, very few words.

Q. I understand, but do you undertake to give us word for word, verbatim, just what you said to him? A. About that.

Q. Well, it may have varied somewhat? A. Not very much.

Q. May it have varied any? A. It might, a word or two.

Q. You intended, did you, to give that $50 to William Sulzer individually.

Mr. Brackett.— I object to that, if the Court please.

Mr. Hinman.— I will withdraw that question, because it appears that the check is to him.

Q. What connection —

Mr. Brackett.— I move to strike out the remark "Because it appears that the check is to him."

The President.— The remarks of counsel of that character will not go on the record.

Q. What position, if any, do you occupy in Tammany Hall? A. Only a member of the general committee.

Q. You are at present a member of the general committee? A. I am.

Q. And were you a member of that committee in November, 1912? A. I was.

Q. Did you have any official position on the committee except to be a member thereof? A. I have not.

Q. Did you have at that time? A. I did not.

The President.— Anything on re-direct?

Mr. Kresel.— No, nothing on re-direct.

The President.— That is all, Mr. Witness.

The witness excused.

Mr. Stanchfield.— I desire to recall Mr. Godwin for the single purpose connected with a paper that we had prepared this morning.

THOMAS M. GODWIN, recalled for further direct testimony, having been previously duly sworn, testified as follows:

Direct examination by Mr. Stanchfield:

Q. I hand you exhibit marked 22 for identification, and ask you what it is (counsel passes Exhibit 22 to witness). A. (After examining.) This is a transcript of the account in the name of William Sulzer of the transactions covering the period between September 3, 1912, and September 20, 1913.

The President.— Did you hear that, gentlemen? If you did not, the stenographer will repeat it to you. Did you hear it?

A Member of the Court.— Yes.

Q. Does the statement embrace all items passed to his credit as well as all checks drawn against it over that period of time? A. It does.

Mr. Stanchfield.— I offer it in evidence.

Mr. Herrick.— Isn't that in evidence already, Mr. Stanchfield?

Mr. Stanchfield.— No, it was marked for identification. The transcript of the account heretofore marked Exhibit M-22 for Identification was received in evidence and marked Exhibit M-22.

Mr. Marshall.— May I have it?

Mr. Stanchfield.— No, I am not through with it. I will read the credit side of this statement.

Q. The dates and the amounts deposited to his credit, his credit balance, Mr. Godwin, on the 3d of September, 1912, was $1,112.58, was it not? A. (After examining) $1,112.58.

Mr. Stanchfield.— September 3d a deposit of $625. September 12th a deposit of $3,500. September 19th a deposit of $200. September 23d, a deposit of $1,253.75. September 25th, a deposit credit of $4,000. October 8th, a deposit credit of $4,400. October 10th, a deposit credit of $3,500. December 1st an interest credit of $61.13. December 16th a deposit credit of $2,625. December 18th, a deposit credit of $1,230.43. December 28th, a deposit credit of $3,000. I will not read any further.

Q. Will you state the credit balance as appears by this exhibit on the 1st day of October, 1912? A. The first day of October?

Q. (Counsel passes paper to witness.) A. (After examining) I think it is the first day of November.

Q. Have you figured —

Mr. Stanchfield.— I will waive that for the moment.

Q. Have you figured the deposit credit or the credit balance on the 1st day of November, 1912? A. I have.

Q. How much was it at that time? A. $15,704.15.

Q. And have you figured the credit balance on the 1st day of December, 1912? A. I have.

Q. How much is that? A. The same amount, $15,704.15.

Mr. Stanchfield.— That is all.

Mr. Hinman.— Let me take that a moment.

(Exhibit 22 is passed to Mr. Hinman.)

Mr. Hinman.— No questions.

Mr. Stanchfield.— Will you want Mr. Godwin any more?

Mr. Hinman.— I think not.

Mr. Kresel.— The City Clerk.

The Clerk.— You do solemnly swear that the evidence which you will give upon this hearing upon certain articles of impeachment preferred against William Sulzer, as Governor of this State, shall be the truth, the whole truth and nothing but the truth, so help you God?

Mr. McCormack.— I do.

The Clerk.— What is your full name.

Mr. McCormack.— Patrick McCormack, 258 West 135th St., Borough of Manhattan.

The Clerk.— Patrick McCormack.

PATRICK MCCORMACK, residing at No. 258 West 135th Street, Borough of Manhattan, a witness called on behalf of the Managers, having been first duly sworn in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Kresel:

Q. Mr. McCormack, are you employed at the office of the City Clerk of the city of New York? A. Yes.

Q. And what position do you occupy in that office? A. Commissioner of Deeds Clerk in the city of New York.

The President.— A little louder.

The Witness.— Commissioner of Deeds Clerk in the city of New York.

Q. Commissioner of Deeds Clerk of the city of New York? A. Yes, sir.

Q. In a general way, what duties do you have to perform in that office with reference to Commissioners of Deeds of the city of New York? A. See that they are signing their register.

The President.— I can't hear you, even here.

The Witness.— Sign the register, signatures, etc.

By the President:

Q. You are the clerk that sees that the Commissioners of Deeds that may be appointed, come there and place their signatures — and sign the records? A. Yes, sir.

Q. Do you administer any oaths of office to them, too? A. Yes, sir, I do.

Q. You administer to them the oath of office and have them sign the register? A. I do.

Q. Have you produced the original register or a leaf therefrom

containing any entries with regard to the appointment of Commissioner of Deeds of one Alfred J. Wolff? A. Yes.

(Witness produces paper.)

The President.— Are you going to take issue that Mr. Wolff —do you concede that he was a Commissioner of Deeds at the time that he took the oath?

Mr. Herrick.— We don't know anything about it and raise no issue about it.

The President.— Do you concede it? He would have to prove it if you do not.

Mr. Marshall.—Let us look at it.

The President.—It is hardly worth while to spend time on that if you do not dispute it.

Mr. Kresel.— He did not want to concede that yesterday and I had to send for this witness.

Mr. Herrick.— No use wasting time on that. We concede his appointment.

The President.— You concede it?

Mr. Herrick.— Yes.

The President.— Then you can take on the record, Mr. Stenographer, that counsel for the respondent concedes — what was the name of that witness?

Mr. Kresel.— Alfred J. Wolff.

The President.— Who was on the stand as a witness yesterday, was at the time he testified he administered the oath a commissioner of deeds in the city of New York, qualified to take oaths and acknowledgments in said city.

Is that sufficient for you?

Mr. Kresel.— That certainly is. That is all, Mr. McCormack.

(Witness excused.)

Mr. Kresel.— I will call Mr. Stadler.

The Clerk.— You do solemnly swear that the evidence you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer as Governor of this State shall be the truth, the whole truth and nothing but the truth, so help you God?

The Witness.— I do.

The Clerk.— What is your full name, please?

The Witness.— Charles A. Stadler.

CHARLES A. STADLER, a witness called on behalf of the Managers, having been first duly sworn, in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Kresel:

Q. Senator Stadler, it is very difficult for the members of the Court in the back row to hear unless you speak very loudly. Will you try to do that? A. I will try it.

Q. What is your occupation now, Senator? A. Maltster. President of the American Malting Company.

Q. And the business of that corporation is the manufacture and sale of malt? A. Yes, sir.

Q. To brewers? A. Yes, sir.

Q. And you are the president of that corporation? A. Yes, sir.

Q. Have you in your employ a gentleman named Dersch? A. Yes, sir.

Q. Charles Dersch? A. Yes, sir.

Q. And is he a salesman for your corporation? A. Yes, sir.

Q. You were at one time a member of this Senate? A. I was.

Q. Of the State of New York? A. Yes, sir.

Q. During what year? A. 1888-92.

Q. Do you know Governor Sulzer? A. I do.

Q. And you knew him in October and November, 1912? A. Yes, sir.

Q. You had known him for a number of years before that? A. Yes, sir. Governor Sulzer was a member of the Assembly during my senatorial term.

Q. Now, Senator, do you remember calling upon William

Sulzer at his office in the city of New York early in September, 1912? A. I don't know whether it was in September or October, but thereabouts.

Q. Well, was it — can you recall whether it was before his nomination for Governor? A. It was.

Q. Now, did you have a conversation with him there? A. At his office, yes, sir.

Q. How did you happen to go there? A. I was informed through Mr. Dersch, who had evidently called upon him before, that Mr. Sulzer would like to see me, and asked him to invite me to his office, and after one or two invitations I went there.

Q. Did anybody accompany you to Mr. Sulzer's office? A. I know Mr. Dersch did, and if my memory is correct, I think Mr. White did.

Q. Mr. Frank White? A. Mr. Frank White.

Q. Who is an attorney in the city of New York? A. Yes, sir.

Q. When you got into Mr. Sulzer's office did the conversation which you had with him occur in the presence of Mr. Dersch and Mr. White? A. Yes, sir.

Q. Or did any part of the conversation take place in Mr. Sulzer's office? A. No; the conversation was a public conversation in the office.

Q. In the office? A. Yes, sir.

Q. Now then, as near as you can recall, will you please state what that conversation was? A. Mr. Sulzer informed me that he was a candidate for Governor, and required the help of his friends; he said that he had known me for some time, and thought that I might help him, and asked me to be of assistance to him. He said, "You can help me in more than one way, and I need the help of my friends."

Q. Did he say at that time that he was a candidate for Governor, or a candidate for the nomination for Governor? A. I think he said he was a candidate for Governor.

Q. But this was before the nomination? A. Yes, sir.

Q. Now, after Mr. Sulzer's nomination, did you have any communication with him? A. Yes, sir.

Q. And what was the first communication after his nomination that you had with him; was it by letter or telegram? A. It was an invitation again to visit him.

Q. I see. And did you visit him again? A. I did.

Q. And where? A. At his office.

Q. His office was where? A. I think it is 115 Broadway.

Q. New York city? A. Yes, sir.

Q. Do you recall whether on this second occasion you went there alone or in company with anybody? A. Mr. Dersch was with me.

Q. State what transpired between you and Governor Sulzer at that time? A. The conversation was of the general topic of the political situation pending, and the same request to intercede wherever I could among my friends, and to help him all that I could, saying that he needed and required the help of his friends.

Q. And what did you say? A. I promised him I would.

Q. Would do what? A. I told him I would do all that I could to help him.

Q. Did you say to him what you were going to do in a general way? A. In a general way, I told him that I would intercede with my friends for him. The exact conversation is impossible for me to remember, for this reason: at the time it was casual and the subject was political, and on the question of assisting him and having my friends to assist him. The fact is I think I am going too fast. I think the conversation was before the nomination, the second time.

Q. You mean the second conversation was likewise before the nomination? A. Yes, sir.

Q. In that conversation was there anything said? A. Yes, sir.

Q. In that conversation was there anything said by Mr. Sulzer as to how you and your friends could help him? A. He said, "You can help me more than one way, and you know what you can do." I told him I thought I understood the situation and would do what I could.

Q. Now, subsequent to the nomination, did you see friends of yours? A. I did.

Q. Among others, whom did you approach? A. Mr. Sulzer requested me to go to 14th street and intercede for him there. I promised him I would, and I did. I went to 14th street and seen the parties in power, talked the matter over there, and recommended Mr. Sulzer's nomination, and promised if they gave him

their support, I would do all I could for him and all that my friends could do; and then subsequently reported back to Mr. Sulzer what I had done, and he thanked me.

Q. Before you went to 14th street, as you described, did Mr. Sulzer expressly request you to go to 14th street? A. He did.

Mr. Herrick.— We do not want to raise technical objections, but how is all this material, that took place before the nomination?

The President.— I do not see, counselor, as it is worth while. Are you coming to a pecuniary contribution?

Mr. Kresel.— I am.

The President.— Don't you think you can get to that transaction?

Mr. Kresel.— I am coming right to it.

The President.— Come right to it, please.

Q. After the nomination, Senator, did you see some of your friends? A. I did.

Q. And whom did you go to see?

Mr. Herrick.— How is that material?

The President.— I do not see that it is.

Mr. Kresel.— Those are the people from whom he got the contributions.

The President.— Get down to what took place between him and the respondent. Isn't it a question of what took place between him and the respondent?

Mr. Kresel.— Yes, but what I propose to prove is he went around among his friends and collected moneys and then turned them over to Mr. Sulzer.

The President.— Get right down to it.

Mr. Kresel.— I will put it this way —

By the President:

Q. You went around to your friends and collected money to help? A. I did.

Q. And then did you go to the respondent here? A. Yes, sir.

Mr. Kresel.— If your Honor will permit me to go on from that point.

The President.— Yes.

By Mr. Kresel:

Q. Did you get a check from Mr. Peter Doelger? A. I did.

Q. I show you Exhibit 34, and ask you whether that is a check you got? A. Yes, sir.

Q. Now, who is Peter Doelger? A. Mr. Peter Doelger is a brewer in the city of New York, an old friend of mine.

Q. And that is the man that you spoke of as having gotten this check from? A. Yes, sir.

Q. Did you get a check from William J. Elias? A. No.

Q. William J. Elias? A. Yes, sir, I did.

Mr. Kresel.— What is the number of that?

Mr. Todd.— Exhibit M-30.

The Witness.— $100, yes, sir.

Q. You got that check from Mr. Elias? A. Wait a moment. I think that check was sent direct. I requested Mr. Elias for a contribution, and if my memory is correct, I think he sent that direct.

Q. You think that went direct to Mr. Sulzer? A. Yes, sir.

Q. At any rate —

Mr. Hinman.— Just a moment, if your Honor please. I object to the form of the question, if it went direct to Mr. Sulzer, the form of it.

The President.— He cannot testify it is true if he doesn't know of his own knowledge, but the check has been indorsed or the proof is it was indorsed.

Mr. Hinman.— We don't object to the answer the witness gave. We object to the form of the question.

Q. Who is William J. Elias? A. He is President of the Henry Elias Brewing Company.

Q. Did you also get a check from George C. Hawley? A. I did.

Q. I show you this check and ask you whether that is the check you got from Mr. Hawley? A. Yes, sir.

Q. Now, who is Mr. Hawley? A. Mr. Hawley is the owner of the Dobler Brewing Company of Albany, New York.

Mr. Kresel.— I offer that check in evidence.

The President.— Is that indorsed?

Mr. Kresel.— No, that is not indorsed. It will appear that was cashed.

The President.— Is it to the order of cash?

Mr. Kresel.— No, it is made to William Sulzer.

Mr. Hinman.— No objection.

Mr. Kresel.— There is no objection to it. It is drawn to William Sulzer. May I first have it marked?

The President.— Yes.

(Check offered in evidence was received in evidence and marked Exhibit M-40 of this date.)

Mr. Kresel.— This check is now marked Exhibit M-40 and reads as follows: The name of George C. Hawley is printed on it. (Reading.)

"Albany, New York, *October* 18, 1912.

"NATIONAL COMMERCIAL BANK

"Pay to the order of William Sulzer Two hundred and fifty dollars.

"Signed George C. Hawley.

"Endorsed William Sulzer. John Holt."

Then the stamps of the various banks through which it went.

Q. Now, Mr. Stadler, who was John Holt whose indorsement appears on this check? A. I don't remember.

Q. Didn't you have an employee in your company named John Holt? A. We did.

Q. That is right? A. We did, John Holt. Yes, he is dead.

Q. Yes, he died recently? A. The poor fellow, he is dead.

Q. Do you recall what you did with this check of Hawley when you got it? Just look at it. A. Yes, I sent it to the bank to be cashed.

Q. You had it cashed? A. Yes, sir.

Q. And you obtained cash on it? A. Yes, sir.

Mr. Kresel.— All right. Now, let me have that.

Mr. Herrick.— Just let me see that one moment.

Mr. Kresel.— All right. (Handing check to Mr. Herrick.)

Q. Now, did you also get a check from August Luchow? A. I did.

Q. Who is August Luchow? A. He keeps a hotel and restaurant on 14th street, New York city.

Q. And he is also a representative in the city of New York of some foreign brewers, is he not? A. Yes, sir.

Q. Now I show you this check and ask you whether that is the one you obtained from Mr. Luchow? A. Yes, sir.

Mr. Kresel.— I offer that check in evidence.

Mr. Hinman.— Just let me look at it before it is marked. Until it is shown, as I assume it will be, that the check went through Governor Sulzer's hands or bank account, I wish to object to it. I assume it can be shown.

The President.— First show the subsequent fate of the check and then you may renew your offer.

Q. After you got this check from Mr. Luchow, state what you did with it? A. I had it cashed.

Q. You had it cashed? A. Yes.

Mr. Kresel.— Now, may I offer it again?

The President.— Are you going to connect that, showing that money went through the respondent?

Mr. Kresel.— I will show it went through the hands of William Sulzer.

The President.— Then I will allow it and it will be stricken out if you don't connect it.

(The check offered in evidence was received in evidence and marked Exhibit M-41 of this date.)

Mr. Kresel.— The Luchow check reads as follows (reading):

"TRUST COMPANY OF AMERICA,

"37–43 Wall Street, New York.

"*October* 28, 1912.

"Pay to the order of Charles A. Stadler Two hundred dollars.

"Signed, 'August Luchow.'

"Endorsed, 'Charles A. Stadler.'"

Underneath that the endorsement of Charles Dersch, and then the stamp of the Security Bank of New York and the Fourth National Bank of New York.

Q. Now, did you also get a check from William and Peter Hoffman? A. Philip Hoffman. William Hoffman?

Q. This check is signed William and Peter Hoffman? A. I think it is Philip.

Q. It may be Philip. I may not be reading it right. Now, look at the check and see if that is the one? A. Yes, it is Philip. Yes, sir.

Q. Who are William and Philip Hoffman? A. William Hoffman is the president of the Jacob Hoffman Brewery of New York.

Q. And he was at that time? A. Yes, sir.

Mr. Kresel.— I offer that check in evidence.

Mr. Hinman.— Let me look at it. We call the attention of the Court to the fact that it has not been shown that the endorsements show that it ever passed through the hands of William Sulzer, and the endorsements show the contrary.

Q. What became of the check, Mr. Stadler, after you received it? Show it to Mr. Stadler, please. A. Why, I requested Mr.— I endorsed it and requested Mr. Dersch to have it cashed.

Q. It was cash? A. Yes.

Mr. Kresel.— Now, I make the same statement, that I shall show that the cash went to Mr. Sulzer.

The President.— It will be admitted.

(The check offered in evidence was received and marked Exhibit M-42.)

Mr. Kresel.— This check reads as follows:

"No. 223. NEW YORK, *Oct.* 12, 1912.

"HUDSON TRUST COMPANY,

"Pay to the order of Charles A. Stadler,
"Two hundred and fifty dollars.

"(Signed) WILLIAM AND PETER HOFFMAN."

Mr. Todd.— Philip Hoffman.

Mr. Kresel.— Or Philip Hoffman. Endorsed "Charles A. Stadler, Charles Dersch;" then the stamp of the Security Bank of New York.

Q. Now, Mr. Stadler, will you state how it happened that the Hoffman and Hawley and Luchow checks were cashed?

Mr. Hinman.— That is objected to as immaterial.

The President.— How is it material unless it was by some direction —

Mr. Kresel.— (Interrupting.) That is exactly what I am going to show.

The President.— Suppose you ask him if he had any conversation about it.

Q. Did you, before delivering any of the money derived from the Luchow, Hawley and Hoffman checks to Mr. Sulzer, did you have any conversation with him about cashing it?

Mr. Hinman.— That is objected to upon the ground that it assumes facts not proven. There is no evidence here, as I understand it, that Mr. Stadler told this to Mr. Sulzer.

The President.— We will omit that part of the question and the rest will stand.

By the President:

Q. Did you have any conversation with the respondent about cashing these checks or for any checks? A. Not at that time.

By Mr. Kresel:

Q. When did you have a conversation with him about cashing checks? A. When the cash money was handed over.

Q. Well, tell now whether you handed it in cash to Mr. Sulzer? A. I handed the cash to Mr. Dersch, and Mr. Dersch invited me, and I went with him, to Mr. Sulzer's house, and it was handed over to Mr. Sulzer.

Q. You and Dersch went to Mr. Sulzer's house where? A. On Second avenue and Fifteenth street.

Q. And you say that there Mr. Dersch handed to Mr. Sulzer how much money? A. If my memory is correct, Mr. Dersch went there twice; the fact is, just as soon as I received any money, I handed it to Mr. Dersch to take it down to Mr. Sulzer, and then subsequently when I got these checks they were cashed, and I think it was on a Sunday morning we went down and saw Mr. Sulzer, and there handed him the money.

Q. How much? A. The second time I don't know; in the neighborhood of $800, $900.

Q. $800 or $900? A. I don't remember exactly.

Q. Well, now, the check of Hoffman is for $250? A. Yes.

Q. The Hawley check is for $250, and the Luchow check is for $200, and you have testified that all three of these checks were cashed? A. Yes, sir.

Q. Now, was the amount — the total amount of those three checks handed to Mr. Sulzer on that Sunday morning visit? A. Yes, sir.

Q. Personally to Mr. Sulzer? A. Yes, sir.

Q. Now, state what conversation there was between Mr. Sulzer on the one hand and yourself and Mr. Dersch on the other? A. Well, Mr. Sulzer simply appreciated the efforts I had made; I told him what I had done through the State for him.

The President.— Speak a little louder, witness.

The Witness.— Excuse me, Judge. I say, Mr. Sulzer appreciated the efforts I had made in his behalf, and thanked me for it. I also informed him at the time that I had made a trip through the State for him, and he thanked me for that, and said that everything else that I might do or could do for him I should not leave undone.

Q. Did you at that time, was there any conversation between you at that time as to where the money came from that you were handing him at that time? A. I informed Mr. Sulzer of every one that I received any money from, and requested him kindly to acknowledge it.

Q. Acknowledge it to whom? A. To the parties that had given it to me.

Q. In other words, you told Mr. Sulzer at that time the name of the person that had made a contribution and the amount of it?

Mr. Marshall.— I object to that as repetition and leading. There is no necessity of leading the witness where it is contrary to the rules of the Supreme Court.

Mr. Kresel.— It wasn't made plain when he gave the names.

The President.— You may ask it.

Q. Is that correct? A. That is correct.

Q. And in addition to that, you asked him to make acknowledgment direct to the contributors? A. I did.

Q. Well, now, was there anything said upon that occasion by Mr. Sulzer to you with regard to cash or checks? A. I think not.

Q. When was it, on what occasion?

The President.— Was there any occasion, witness, was there any occasion on which he spoke to you about the subject of cash instead of checks, or anything of a similar kind or nature.

The Witness.— I would have to say something in addition to that. The fact of cashing those checks came about at the request made to me by Dr. Dersch. Mr. Dersch, who is here, informed me —

Mr. Hinman (Interrupting).— That is objected to.

Mr. Kresel.— Don't tell us that.

The President.— Objection sustained.

Q. I understood from a previous answer you had made that at some time or other there was some talk between yourself and Mr. Sulzer with regard to cashing some of these checks. Now, I am trying to get from you that talk. A. Mr. Dersch remarked —

Mr. Marshall (interrupting).— I object to Mr. Dersch's remark.

The President.— I think the witness means to tell you what occurred.

By the President:

Q. Mr. Witness, did you have any personal talk with the respondent Sulzer on the subject of getting cash instead of checks? A. Yes, sir.

Q. Well, then, won't you tell what he said to you personally, that you heard? A. He answered the question — he answered Mr. Dersch, who remarked to him at the time that these checks were cashed, and Mr. Dersch said, in the presence of Mr. Sulzer, that Mr. Sulzer had requested it, and I said it didn't make any difference to me.

By Mr. Kresel:

Q. Mr. Sulzer had requested what? A. That he preferred to have cash to checks.

Q. Now, in addition to these five checks that you obtained, did you personally give any money of your own to Mr. Sulzer? A. Counselor, I am in doubt about it.

Q. You are in doubt about that? A. Yes, sir; I contributed money that I know never went through Mr. Sulzer's hands.

Q. No, I mean directly to Mr. Sulzer? A. I will not swear that I did.

Q. Very well. Now, then, will you tell the Court what you did with the Doelger check when you got that money? A. Why, that was given to Mr. Dersch, and Mr. Dersch handed it over to Mr. Sulzer.

By Mr. Herrick:

Q. In your presence? A. Yes, sir.

By Mr. Kresel:

Q. And the Elias check, your impression is that that is direct — A. (interrupting). That is my impression.

Q. (Continued). To Mr. Sulzer? A. Yes.

Q. Now, let me ask you, Mr. Stadler, to try — take your mind back to the visits that you made to Mr. Sulzer's office and Mr. Sulzer's house, and tell us what the total amount of cash was that you handed over to him, or that Mr. Dersch handed over to him in your presence? A. I think the total amount amounts to about $1,400, yet I may be in error; it might be perhaps only $1,300; I don't think it is over $1,400.

Q. And did you tell Mr. Sulzer at the time when you handed over these moneys where you got them from? A. I did.

Q. And did you tell him what they were given for? A. I told him they were contributions that I had requested from my friends towards his campaign, and I got it, and here it is. I am sorry I was ever brought here.

By Mr. Kresel:

Q. Now, Senator, during the course of the campaign did you write any letters to Mr. Sulzer? A. I think I wrote him one letter.

Q. One letter? A. Yes, sir.

Q. Do you remember the date? A. I do not.

Q. Will you look at this paper which I show you and see whether that refreshes your recollection as to the date of the letter that you wrote? A. I really cannot.

Q. Was it about the date of that letter? A. I could not tell.

Q. You notice that the letter that I handed you purports to be a response to a letter of yours? A. Yes, sir.

Q. Is that the letter that you are speaking of as having written to Mr. Sulzer? A. No, I think I must have written another one a little later on.

Mr. Kresel.— Very well. Now, will the gentlemen on the other side please produce the original letters from Mr. Stadler to Mr. Sulzer?

Mr. Herrick.— We have not got it.

Mr. Marshall.— We know of no such letter.

Mr. Kresel.— I will give a notice to produce, if your Honors please.

Q. Did you keep copies of letters that you wrote to Mr. Sulzer? A. No, sir.

Q. Will you state to the Court the substance of what you wrote to Mr. Sulzer in the first letter? A. Regarding to which this seems to be an answer I really forget —

The President.— Speak louder, witness.

The Witness.— Regarding the letter that is just shown me dated I think November 4th, I cannot remember what my letter was. I do not remember. The only letter I do remember writing to Mr. Sulzer was subsequently regarding the editor of a newspaper who had been very active and who wanted me to intercede for him for the purpose of getting some of the advertising of the State and I endorsed the application and I sent that to the Governor-elect.

Q. I was not trying to get that letter. I was directing my inquiries to letters that you wrote to Mr. Sulzer about these various contributions? A. I wrote a letter — let me see — yes, I wrote a letter to Mr. Sulzer I think, about the acknowledgment.

Q. What about the acknowledgment? A. Acknowledging the

amount of money that he received from the various parties from whom I had received the money.

By the President:

Q. As I understand your statement, you mean that you wrote to him that he should acknowledge to these various parties their contributions? A. Yes, your Honor.

By Mr. Kresel:

Q. Now, I show you four letters and ask you whether you received those four letters from Mr. Sulzer? A. Yes.

Mr. Kresel.— I offer those in evidence.

Mr. Herrick.— Let us see them.

Mr. Hinman.— If your Honor please, I did not get the question that was last asked the witness and his answer; did he say he received them?

The President.— He said he received those four letters from the respondent.

Mr. Hinman.— I object to the form of the question if I may, or rather to the letters in so far as the question assumes further than that he received these letters. I do not know about the signatures to them and I do not assume the witness undertakes to say they are signed by William Sulzer.

Mr. Kresel.— Let me inquire of the witness.

Q. Senator, did you receive these letters through the mail? A. I did.

Mr. Kresel.— Now, I offer them.

Mr. Herrick.— No objection.

(Four letters offered in evidence received and marked Exhibits M-43, M-44, M-45 and M-46, respectively.)

Mr. Kresel.— Taking the letters up in the order of their dates, the first one, Exhibit M-43, is on the stationery of the Committee

on Foreign Affairs, House of Representatives, and reads as follows:

"115 Broadway, New York, *October* 11, 1912.

"Charles A. Stadler, Esq., care *American Malting Company, Buffalo, New York:*

"My Dear Mr. Stadler.—Many thanks for your good wishes and congratulation. You are a good friend of mine and I certainly appreciate all you say. You can help very much in the campaign.

"With best wishes for your health and success, believe me,

"Very sincerely your friend,

"William Sulzer."

The next letter is Exhibit 44 and is dated November 4, 1912, likewise on the stationery of the Committee on Foreign Affairs and reads as follows:

"Hon. Charles A. Stadler, *foot of East 63rd Street, New York City:*

"My dear Senator.—Your letter was duly received. Many thanks for all you have done in my behalf. I certainly appreciate it. With best wishes, believe me,

"Very sincerely your friend,

"William Sulzer."

Exhibit 46 is likewise on the stationery of the Committee of Foreign Affairs and reads as follows:

"115 Broadway, New York, *November* 7, 1912.

"Hon. Charles A. Stadler, *foot of East 63rd Street, New York City:*

"My dear Senator.—Many thanks for your kind telegram of congratulations and good wishes. I certainly appreciate all you say and all that you did. Believe me, as ever,

"Very sincerely your friend,

"William Sulzer."

The last one, Exhibit M-45, is on the stationery of the House of Representatives, United States, Washington, D. C.:

"115 Broadway, New York, *November* 15, 1912.

"Hon. Charles A. Stadler, *foot of 63rd Street and East River, New York City:*

"My dear Mr. Stadler.— Many thanks for your congratulations and good wishes. I certainly appreciate all you say. With best wishes, believe me, as ever,

"Sincerely yours,

"William Sulzer."

That is all.

Mr. Hinman.— No questions.

Mr. Marshall.— That is all. No questions.

Mr. Herrick.— Have you got any more important letters of that kind?

The Witness.— I did not know I had them.

(Witness excused.)

Mr. Kresel.— Mr. Dersch.

The Clerk.— You do solemnly swear that the evidence that you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer, as Governor of this State shall be the truth, the whole truth and nothing but the truth?

The Witness.— I do.

The Clerk.—What is your full name?

The Witness.— Charles Dersch.

Charles Dersch, a witness called in behalf of the Managers, having been first duly sworn in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Stanchfield:

Q. Where do you reside? A. 222 East 29th street, New York city.

Q. Your occupation is what? A. Salesman for the American Malting Company.

Q. That is the corporation of which the last witness is the president? A. Yes, sir.

Q. Do you know the respondent, Governor Sulzer? A. I do.

Q. Did you see him in the fall of 1912 subsequent to his nomination? A. I did.

Q. Where? A. At his office, 115 Broadway.

Q. Did you go there to congratulate him? A. No, sir, he was not then nominated as yet.

Q. I asked you if you saw him after his nomination? A. I thought you asked prior.

Q. No, I used the word subsequent? A. I did.

Q. I will not go before his nomination. I care nothing about that. After his nomination did you see him? A. I did.

Q. At his office? A. I saw him at his house.

Mr. Marshall.— Speak louder. We cannot hear you.

The Witness.— I will.

The President.—You will have to speak louder.

The Witness.— I will.

The President.— Now gentlemen, please maintain quiet.

The Witness.—At his house on 2d avenue and 11th street.

Q. Was that in October? A. Why no, that was after he was elected. You asked after his election.

The President.— No, after he was nominated.

The Witness.—After he was nominated? Yes, I saw him then and afterward.

Q. About the 15th of October? A. Around about that time.

The President.— Before the election, during the period called the election campaign?

The Witness.— Exactly, your Honor. During that time.

Q. On the 15th or about that, of October? A. Yes, sir.

Q. You saw him at his house? A. Saw him at his house.

Q. Did you have anything with you at the time in the way of checks? A. I had some money with me at the time.

Q. This is the first occasion you saw him after his nomination? A. At that time.

Q. Did you not have with you two checks at that time? A. I believe I delivered the two checks at his office 115 Broadway and delivered the money at his house.

Q. We will get over to his office. What two checks did you have with you when you saw him at his office? A. I cannot remember.

Q. You have signed a statement here, haven't you? A. I have.

Q. And you — A. I didn't at the time I signed the statement, I think I mentioned I didn't know which two checks were. I thought one, to the best of my knowledge, was the Doelger check. Which the other one was, I don't know. I wish you would call my attention to it.

Q. That is the statement you signed, isn't it? (Handing statement to witness.) A. Yes.

Q. You took the pains to initial the bottom of each page? A. By request I did that.

Q. Never mind. You initialed it, didn't you? A. I did.

Q. You knew the contents of that when you signed it? A. I read it, yes, sir.

Q. Start at October 15th and read the next five lines.

Mr. Marshall.— Do you mean aloud?

Mr. Stanchfield.— To himself.

The President.— What?

Mr. Marshall.— I simply wanted to know if the witness is called upon to read that aloud.

Mr. Stanchfield.— No. I simply want him to read the next five lines to himself after October 15th.

The President.— Of course he can read it to refresh his recollection. You cannot read it to impeach him.

Mr. Stanchfield.— No, I didn't offer it for any such purpose.

The President.— That is what I understood. You simply offered it to refresh his recollection.

The Witness.— I knew one was the Doelger check and the other —

Q. I will ask you. You have read what I requested you to read? A. Just those two lines, yes, sir.

Q. On the 15th of October when you saw Governor Sulzer did you have with you two checks? A. Yes, sir.

Q. The Doelger check for $250 and the Elias check for $100? A. That is what I thought I had at the time when I made that statement. I presume it was the Elias check. There were two checks.

Q. One for $250 and one for $100? A. Yes, sir.

Q. Are those the two checks in Exhibits 30 and 34 that you had? A. They were in an envelope and I handed them to the Governor, not seeing the checks.

Q. You did not see the checks? A. No, sir. They were handed to me in an envelope. I was merely acting in the capacity of messenger.

Q. Did you see them before you went to see the Governor? A. I didn't.

Q. Did you tell Mr. Sulzer at that time what you had been instructed to say to him with reference to those checks? A. I just merely told him the senator gave me those two checks to bring down to him. He thought they were very nice.

Q. Is that all you said to him? A. That is all that time at his house.

Q. Just take your paper again and read three or four lines more.

Mr. Herrick.— May I ask a few preliminary questions at this stage.

Mr. Stanchfield.— I object to that. Let us go on.

The Witness.— That is all I say there; there were two checks, to the best of my recollection; that is all I spoke of.

Mr. Herrick.— I want to know about this before he is examined to refresh his recollection.

The President.— I suppose the witness can refresh his recollection by anything?

Mr. Stanchfield.— Yes.

Mr. Herrick.— I understand that to be true, but it depends upon what it is from.

Mr. Stanchfield.— I think a judge of the Court of Appeals once remarked a witness might refresh his recollection by looking at a barn door.

The President.— Only certain papers are competent to be put in evidence, but he may refresh his recollection. It is only for that purpose.

Mr. Herrick.— It may be of some consequence to us to know what he is refreshing his recollection from.

The President.— He can find that out after cross-examination.

Q. Did you—

The President.— One moment. Now, you may proceed.

Q. Did you read through the statement I showed you? A. Yes. I just say I offered the Governor two checks at his office which were given to me by Senator Stadler to deliver to him.

Q. For what purpose? A. Well—

Mr. Herrick.— One moment. I object to that.

The Witness.— I don't know.

Q. What did you tell—

The President.— What did you tell Mr. Sulzer?

The Witness.— I told Mr. Sulzer there were two checks sent down by Mr. Stadler for me to give to him, which he thanked the Senator for through me.

Q. For what purpose did you tell Mr. Sulzer you brought those checks?

Mr. Herrick.— We object to that. It assumes he told him it was for some purpose.

Mr. Stanchfield.— Look at the statement again.

Mr. Herrick.— We object to this method of cross examination.

The President.— I think it is proper.

Mr. Herrick.— He can't refresh his recollection —

The President.— He may do so.

The Witness.— Even if I did use the word "campaign" no doubt it was used for that purpose.

Mr. Herrick.— We ask that that be stricken out; no doubt it was used for that purpose.

Q. There is no doubt of the purpose. I ask you what you said to Mr. Sulzer about those two checks? A. I merely said, as I said before, that I handed these two checks to Mr. Sulzer and told him Senator Stadler asked me to bring them to him. They were enclosed in an envelope. If I did use the word "campaign"—

Mr. Herrick.— We object to that. It does not appear you used it.

Q. I didn't ask you that. I ask you to read what you signed and initialed and then tell me what you said to Governor Sulzer those checks were for. That is what I want you to tell me. A. I merely stated this. I gave you my answer.

The President.— Now, what did you say they were for?

The Witness.— I said for campaign purposes, that they were for campaign purposes.

Mr. Stanchfield.— Very well. That is what I want.

Q. Now, you handed those checks to Governor Sulzer, did you not? A. I did, sir.

Q. What did he say after you handed them to him? A. He told me to thank the Senator for it.

Q. Well, go on, what else? A. That was all. I left his office.

Q. Read the bottom of that page and the top of the next one. (Witness does as directed.) A. Well—

Q. Now, tell me what Governor Sulzer said when you handed him those checks? A. He thanked me and told me to thank the Senator for it.

Q. What else? A. I don't know of anything else. I left the office after that.

Mr. Herrick.— Now, Mr. President, may I be permitted to ask a few questions about this time. It seems to me this is a most extraordinary way of examining the witness.

Mr. Stanchfield.— If your Honor please —

The President.— I think it comes within the rule.

Mr. Stanchfield.— If your Honor please, if Judge Herrick persists in wanting an explanation of why I am pursuing this method I am perfectly willing to give it to him. I am endeavoring not to.

Mr. Herrick.—Very carefully.

Mr. Stanchfield.— I will tell it if you keep at it.

The President.— One moment, gentlemen, see if we can't get along.

Q. I want you to read those four lines. A. Oh, yes, but this was after —

Q. Never mind whether it was after or before. A. I know, but you —

Q. What else did Governor Sulzer say to you? A. To whom?

Q. To you, with reference to future collections; what did he say to you? A. Oh, well — you asked me about the checks and I told you about them. When you get down to that, I will tell you about that.

Q. What did he say about future collections? A. He asked me if I got any more checks to be kind enough to have them cashed.

Q. Precisely. A. But you didn't ask me that question, sir.

Q. Did you subsequently see Senator Stadler after you left Mr. Sulzer's office? A. I did, sir.

Q. Did you deliver Governor Sulzer's message to him, with reference to getting cash in the future? A. I did, sir.

Q. Now, later, about the 29th of October, did you get another envelope from Senator Stadler? A. I did, sir; the date I cannot remember, but thereabouts.

Q. The latter part of October? A. The latter part of October.

Q. What did that envelope contain? A. Some money.

Q. How much? A. To the best of my knowledge about $700.

Q. Was it in cash? A. In bills; yes, sir.

Q. What did you do with that envelope, with the $700 in bills in it? A. Brought it to the Governor's house.

Q. Where? A. On Second avenue and Eleventh Street.

Q. Did you see the Governor there? A. I cannot remember whether the Governor was there, but his wife was there and she took it and put it in the desk.

Q. Do you recollect with any certainty whether the Governor was there? A. I cannot recall, and I think my statement says that too.

Q. What day of the week was that? A. That is something I cannot remember. We were there on Sunday morning, but on that occasion I don't remember that I brought any money.

Q. Just look at that statement where I am pointing, "I delivered." Do you now want to cling to your statement that you delivered the cash to Mrs. Sulzer? A. I said Mrs. Sulzer. I don't remember whether Mr. Sulzer was there and I so said at the time.

The President.— Nobody can hear your answer. Mr. Stenographer, read the question and answer.

The stenographer read the question and answer as follows: "Do you want to cling to your statement that you delivered the cash to Mrs. Sulzer? A. I said Mrs. Sulzer; I don't remember whether Mr. Sulzer was there and I so said at the time."

Q. I ask you to read that statement to refresh your recollection and then tell this court to whom you delivered that cash? A. I said at the office at the time —

Q. No, no —

The President— No, that is not the question.

Q. After reading that, to whom will you now say you delivered that cash?

The President.—That is it. That is the question.

The Witness.— I believe both were there. Now, whether I handed it to Mr. Sulzer or to Mrs. Sulzer I don't remember, but I know they took the cash I brought up to the house; admitting then it was Mr. Sulzer —

Q. Very well. I don't want you to admit anything.

Mr. Herrick.— I ask to have that stricken out.

The President.— One moment; ask your questions, counsel.

Mr. Stanchfield.— If there was anything improper I withdraw it, but I say I did not ask him to admit anything.

Mr. Herrick.— He consented to having it stricken out.

The President.— Let us get on without any play between counsel.

Mr. Stanchfield.— Surely, we consent to striking it out.

The Witness.— To the best of my knowledge it was Mrs. Sulzer.

Mr. Herrick.— It was not a play between us. It was a consent that something be stricken out.

The President.— I beg your pardon. It was my defective hearing that caused me to misunderstand.

Q. I call your attention once more to that page which you initialed. Are you reading the few lines that you signed there with reference to the delivery of this cash? A. Yes.

Q. Now, with that in your mind fresh as to just what you wrote there, whom will you now swear under your oath you gave that cash to? A. At the time this was made —

The President.— That is not the question. You have read it.

The Witness.— I cannot remember to whom I handed the money at the time, whether to Mr. Sulzer or Mrs. Sulzer. I believe they were both there at the house and Mrs. Sulzer took the money and laid it in the desk.

Q. In that statement do you make any reference to Mrs. Sulzer.

Mr. Herrick.— One moment.

The President.— Objection sustained.

Q. Your statement now is, with that before you, that you gave it to either Mrs. Sulzer or Mr. Sulzer.

Mr. Herrick.— He has just said that Mrs. Sulzer took it in her hand and put it in the desk.

Q. Did you say Mr. Sulzer was there? A. I said at the time when I made this statement that I believe that he was there at the time.

Q. What do you say now? A. I cannot recall it really, whether he was there or not, but I believe he was there at the time, but I know I handed the money, and I know the words she said to him, if you will permit me to use the words she said to him.

Q. What I am interested in is what you did with the money? A. I handed it to either of them at Mr. Sulzer's house on Sunday morning. I could not remember the date, for it is not there; I cannot recall now. You have my statement there, and this might refresh it if you show it to me. If I made that statement—

Q. You have read it, haven't you? A. When?

Q. Now. A. Just now. I read that line there, yes.

Q. Was Senator Stadler with you at that time? A. To the best of my knowledge, I believe not, no.

Q. Did you go there on another Sunday with Senator Stadler? A. We were there together, one Sunday morning.

Q. How much money did you give Mr. Sulzer upon the Sunday morning that you were there with the Senator? A. There were only two occasions. On one occasion I brought the checks and that was at his office, and the other occasion was when I brought the $700; those were three checks which I had cashed, and I brought him the money. I do not know whether the Senator was there with me or not. There was no other occasion I brought him any money.

Q. On the Sunday when you were there with the Senator, did the Senator hand him any money? A. No, sir, not to my knowledge.

Q. Were you sitting here while he was on the stand? A. Over here, yes sir.

Q. Did you hear him testify? A. Yes.

Q. Did you hear him say that he did give him money on that Sunday morning? A. He said that I handed him the money on one occasion, the two checks I brought, and the three checks were cashed, that is the best of my knowledge. Those are the only two instances I know of.

Q. On the occasion when Senator Stadler says that on Sunday morning that you handed Mr. Sulzer this money, is he mistaken about it?

Mr. Hinman.— Objected to.

The President.— Objection sustained.

Q. You take the position now, if I understand you, that you say the one occasion that you gave Mr. Sulzer this $700, if that was the correct amount, in cash?

Mr. Hinman.— Objected to upon the ground that the witness has already stated that he could not be there and cannot testify that he gave it to Mr. Sulzer, and his recollection is he gave it to Mrs. Sulzer.

The President.— The witness' statement, as I understand it, was that there were only two occasions, one when he gave him two checks, which was at his office, and the other at the house where he gave the money, he says, or at least the physical possession of it was given to Mrs. Sulzer.

The Witness.— Yes sir.

The President.— But he cannot swear positively whether Mr. Sulzer was there or not, but his recollection is he was there.

By the President:

Q. Is that what you said? A. Yes, sir.

By Mr. Stanchfield:

Q. You were never there with Senator Stadler, according to your recollection, on but one Sunday morning? A. Yes, sir.

Q. On but one Sunday morning? A. That is all, to the best of my knowledge, yes, sir.

Q. Are you perfectly sure that you were at Mr. Sulzer's house with Senator Stadler on one Sunday morning? A. Yes, sir.

Q. You are sure of that? A. Yes, sir, I am sure of that.

Mr. Stanchfield.— That is all.

Cross examination by Mr. Hinman:

Q. Mr. Dersch, counsel in examining you, has called your attention to a statement for the purpose of refreshing your recollection. Where was that statement prepared? A. At the office of Mr. Kresel, at the Board of Managers.

Q. Mr. Kresel, one of the counsel here in this case? A. Counsel of the Board of Managers.

The President.— A little louder.

The Witness.— Yes, your Honor.

Q. Where was — in what office were you — was that statement prepared, and where were you when it was prepared? A. In the private office of Mr. Kresel.

Q. Who was present there in the private office of Mr. Kresel when the statement was prepared? A. Mr. Kresel and the stenographer.

Q. Was the stenographer, do you know the name of the stenographer? A. I do not, sir.

Q. Do you recall now whether it was a man or a woman? A. A lady.

Q. And by the office of Mr. Kresel you mean his law office in New York? A. No, at the Board of Managers' office, in a side room, a separate room.

Q. In referring to the Board of Managers, do you mean the Board of Managers of the Assembly of the State of New York? A. Of the Assembly, of which Mr. Kresel is counsel.

Q. When was that statement prepared? A. Oh, about two weeks ago, to the best of my knowledge; I can't recall the date.

Q. Was anyone present during any part of the preparation of the statement besides Mr. Kresel, the stenographer and yourself?

A. No, sir. Only one interruption of Mr. Levy running in and coming out, that was all, nothing said.

Q. What Levy is that?

The President.— Was that Mr. Aaron Levy?

The Witness.— Mr. Aaron Levy.

Q. A member of the Assembly? A. Yes, sir. He asked where he could get something good to eat.

Q. Asked you? A. Asked Mr. Kresel.

Q. How long a time was consumed in the preparation of the statement? A. Oh, I should say half hour, half hour or thereabouts; I didn't time it.

Q. Was what you said there at that time, when the statement was being prepared, and what Mr. Kresel said, all taken down in shorthand, or don't you know? A. In shorthand, yes, sir.

Q. Do you know whether or not everything that was said from the time you went in that office till you left the office was incorporated in this statement? A. To the best of my knowledge the stenographer took it down; of course I can't say.

Q. Do you know whether or not everything that Mr. Kresel said to you on that occasion was incorporated in this statement? A. I noticed the stenographer taking down everything he had said and I had answered.

Q. What appears in the stenographer's notes, of course you do not know? A. I do not after — what I merely signed.

The President.— Is that all?

Mr. Hinman.— I think so.

Mr. Stanchfield.— On that cross examination, if the presiding judge please, I offer this statement in evidence.

The President.— Excluded unless — well, I beg your pardon.

Mr. Herrick.— We object to it.

The President.—You object to it?

Mr. Herrick.—Yes.

The President.—Excluded.

Senator Thompson.— Mr. President.

The President.— Senator Thompson.

Senator Thompson.— I desire to ask this witness one question.

The President.— Yes.

By Senator Thompson:

Q. Mr. Witness, what did you go to Mr. Sulzer's house on the Sunday morning for? I understood you to say you went there on Sunday morning? A. To bring him the money which I had the care of — the checks cashed at my bank for him, when he asked me to kindly do so, and asked the Senator.

Q. Senator Stadler? A. To the best of my knowledge and belief, yes. And if you want me to, I probably may add what he asked me at the time, that he needed it for traveling expenses, and the words of Mrs. Sulzers' I will also state.

Re-direct examination by Mr. Stanchfield:

Q. Mr. Dersch, you were subpoenaed before the Frawley committee, were you not? A. Yes sir.

Q. Now, when you went down to the office of the Board of Managers— A. (Interrupting)— You asked me about the Frawley committee first.

Q. I will withdraw that for the time being. A. There was nobody there except Mr. Richards and myself.

Q. You went down to the office of the Board of Managers? Yes sir.

Q. And you there saw Mr. Kresel? A. I did, sir.

Q. Did you ask that you be given a private hearing? A. I didn't but Mr. Kresel asked me.

Q. Asked you? A. Yes sir.

Q. Well, put it either way. And you then made a statement, did you not? A. I did, sir.

Q. And the paper that I have asked you to look at over and over again is signed by you? A. True.

Q. It is the statement that you made? A. Yes.

Q. Each individual page of it is initialed by you, isn't it? A. Well, the lower end.

(Counsel passes paper to witness).

Q. Each individual page of it is initialed by you? A. It is, only it was the words that were put to me; probably they may have changed it a little; the substance of it is there.

Q. You don't in any way challenge the correctness of that statement, do you.

Mr. Herrick.— Wait a minute. That is objected to. It is incompetent and immaterial.

Mr. Stanchfield.— I submit it is entirely competent and material.

The President.— I think the question should be, so far as he knew at the time, whether that was correctly taken down.

Mr. Herrick.— He can't state as to whether it was correctly taken down; he didn't know what the stenographer took down.

The President.— Probably I used inaccurate language. I mean does that paper given to the witness show—

Mr. Hinman.— If the paper will be handed up to the court the court will observe that it is not all questions and answers, and the witness testified that he was asked questions and made answers.

The President.— I suppose that was written in narrative form.

Mr. Stanchfield.— Yes.

Q. Mr. Dersch, there isn't anything in that statement to which I have called your attention that you did not sign?

Mr. Herrick.— Wait a minute, that is objected to.

By the President:

Q. Witness, was that read to you after the stenographer had taken it from his notes, and put it in narrative form? A. It was shown to me after the stenographer had it typewritten and I read it over in a hurry at the office of Mr. Kresel, and signed it.

Q. Was it correct, as far as you know? A. To the best of my knowledge, yes.

By Mr. Stanchfield:

Q. You dropped a remark that you forgot to say either here or in that statement, that Mr. Sulzer said he needed that money for traveling expenses? A. Yes, I forgot to mention that in there.

Q. Traveling expenses in the campaign? A. Why, he said about cashing the checks that he could use the cash, he could use the cash as he goes along in traveling expenses.

Q. During his campaign? A. During his campaign, yes, sir.

Mr. Stanchfield.—Yes. That is all.

The Witness.— If you want to know what she said, I will tell you.

Mr. Stanchfield.—When I want to know I will ask you.

Senator Wagner.— Mr. President.

The President.— Senator Wagner.

By Senator Wagner:

Q. Was that on the Sunday morning that you were at his office? A. To the best of my knowledge, yes.

Q. Then you did talk to him on that Sunday morning? A. Oh, sure. Well, as I said, I don't remember whether I handed him — it was asked whether I handed him the money or her.

Q. You talked to him about it on that Sunday morning, about the money? A. About the money, that is right.

Mr. Stanchfield.— That is all, Mr. Dersch, by common consent.

Mr. Stanchfield.— I call Mr. Coler.

The President.— Do you affirm or swear with the uplifted hand?

Mr. Coler.— Either.

The President.— Let him swear.

The Clerk.— You do solemnly swear that the evidence which you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer, as Governor of this State, shall be the truth, the whole truth and nothing but the truth, so help you God.

Mr. Coler.— I do.

The Clerk.—What is your full name?

Mr. Coler.— Bird S. Coler.

BIRD S. COLER, a witness called on behalf of the Managers, having been first duly sworn in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Stanchfield:

Q. Mr. Coler, where do you reside? A. Brooklyn, New York.

Q. You will have to speak pretty distinctly so that this entire Court may hear you. You say you live in Brooklyn, New York? A. Yes, sir.

Q. And your occupation now is, and for the past ten or fifteen years has been what? A. Banker.

Q. With an office in the City of New York? A. Yes, sir.

Q. Are you acquainted with William Sulzer, the respondent in this proceeding? A. I am.

Q. Have you known quite some years? A. Yes, a long while.

Q. Now, where were you, Mr. Coler, at the time of his nomination for Governor in the fall of 1912? A. What time was he nominated?

Q. The 2d day of October, and the election was on the 6th of the succeeding November.

Mr. Hinman.— The 5th.

Mr. Stanchfield.— The 5th.

A. I was either in New York or on my way to New Mexico.

Q. Did you learn of his nomination? A. I did.

Q. Did you write him a letter in regard to it? A. Around the 24th of October I wrote him a letter enclosing a check for $100 contribution.

Q. From where did you write that letter, Mr. Coler? A. The city of Santa Fe, New Mexico.

The President.— Will you speak a little louder, Mr. Coler?

The Witness.— I said Santa Fe, New Mexico.

Mr. Stanchfield.— Will you produce that letter?

Mr. Herrick.— We have not got it.

Q. Did you keep any copy of the letter? A. No, sir.

Q. Will you tell us from memory, as well as you are able, its contents? A. As near as I can recollect it, it stated that he was sure of being elected, and that he did not need, that there was not use for much money during the campaign.

Q. Is that the substance of it? A. Yes, sir.

Q. Did you receive any acknowledgment from it or of it? A. I did.

Q. Did you preserve the answer? A. No, I did not.

Q. I hand you a check — A. I did not receive any acknowledgment of the check; I received a letter thanking me for my kind words of encouragement.

Q. A great many others got that. Is that the check you enclosed to him (showing check)? A. It is.

Q. Signed by you? A. Yes, sir.

Mr. Stanchfield.— I offer it in evidence.

Mr. Kresel.— It is in evidence already.

Mr. Stanchfield.—Very well. The check is marked in evidence, Exhibit 37, in the form of a check:

"New York, *October* 24th, 1912.

W. N. COLER & COMPANY, BANKERS

No. 43 Cedar Street.

Pay to the order of William Sulzer.....$100.00
One hundred .....dollars

Bird S. Coler."

Endorsed: William Sulzer and Louis A. Sarecky.

Mr. Marshall.— Is it a rubber stamp endorsement?

Mr. Stanchfield.— I don't know whether it is or not. You can see it. That is all.

The President.— Any cross?

Mr. Hinman.— I want to ask a question or two.

Cross examination by Mr. Hinman:

Q. Mr. Coler, had your attention been called to the contents of the letter which you wrote to Mr. Sulzer, on or about October 24, 1912, since the time you wrote it, until recently? A. No.

Q. I ask you whether or not you are giving or undertaking to give, the language that was used in that letter, which you wrote him on the 24th of October, or simply giving your recollection of the substance of it? A. Practically the language; it was very short.

Q. Did you dictate it in Santa Fe? A. I was giving some other contributions at the time, and I wrote it in the rooms of the Democratic State Committee of the State of New Mexico.

Senator Thompson.— We cannot hear.

The Witness.— I was making out some other checks for contributions at the same time, and I wrote it in the Democratic State Committee Room, State of New Mexico.

Q. Have you caused search to be made for the letter which you say you received thanking you for your congratulations? A. I have.

Q. And have you been able to find it? A. No, I haven't. I did not lay any particular stress on it at the time.

Q. I will ask you, Mr. Coler, to look at this check and tell me if you can whether the endorsement "William Sulzer" appears to be affixed there with a rubber stamp?

The President.— That appears for itself, doesn't it?

Mr. Hinman.— I think so. It was read off and stated as though it was an endorsement of William Sulzer.

Judge Bartlett.— We all have facsimiles of it that indicate the character of the endorsement on it.

The President.— Call your next witness.

Mr. Kresel.— We call Mr. Fixman.

The Clerk.— Mr. Fixman, you do solemnly swear that the evidence which you shall give upon this hearing upon certain articles

of impeachment preferred against William Sulzer, as Governor of this State, shall be the truth, the whole truth and nothing but the truth, so help you God?

The Witness.— I do.

The Clerk.— What is your full name?

The Witness.— Ezekiel Fixman.

EZEKIEL FIXMAN, a witness called in behalf of the Managers, having been first duly sworn, in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Kresel:

Q. Mr. Fixman, are you an attorney and counselor at law? A. I am.

Q. And you are practicing your profession in the city of New York? A. I am.

Q. Do you know Mr. A. H. Stoiber? A. I do.

Q. Where is Mr. Stoiber? A. In Paris, France.

Q. Has he been living abroad for some time? A. Since 1897.

Q. Prior to going abroad were you in business with him? A. I was.

Q. And have you charge of his business in America while he is abroad? A. I have.

Q. And you have a power of attorney to draw checks on his account in the City of New York? A. I have.

Q. Do you know Governor Sulzer? A. I do.

Q. You have known him for how many years? A. Over 30 years.

Q. During the month of October, 1912, did you send Mr. Sulzer a check? A. I did.

Q. Did you send him a letter with that check? A. I did.

Q. Have you a copy of the letter? A. I have.

Q. May I have that copy, please? A. You may.

Mr. Kresel.— Mr. Marshall, have you the original letter.

Mr. Marshall.— I have no letters.

Mr. Kresel.— We have given notice to produce. I offer in evidence the copy of this letter.

(Letter offered in evidence, admitted and marked Exhibit M-47.)

Mr. Kresel.— I will read the letter in a minute.

Q. Enclosing in the letter, did you send a check? A. I did.

Q. I show you Managers Exhibit 36. Is that the check? A. Is is.

Mr. Kresel.— May it please the Court, the check reads as follows:

"New York, *Oct.* 19th, 1912.

THE CHEMICAL NATIONAL BANK OF NEW YORK

Pay to the order of Hon. William Sulzer, $100.00 One hundred dollars.

A. H. Stoiber,
per Ezekiel Fixman, Atty."

Q. Is that correct? A. That is correct.

Mr. Kresel: Endorsed: William Sulzer, and then L. A. Sarecky, and deposited in the Mutual Alliance Trust Company. The letter reads as follows:

"*October* 19, 1912.

Hon. William Sulzer, 115 *Broadway, New York City:*

Dear Mr. Sulzer.— I am in receipt of a letter dated at Paris October 10th, 1912, from Mr. A. H. Stoiber, in which he requests me to send you his check for $100 to your order, together with the enclosed letter. I take pleasure in enclosing the check and letter addressed to you, and beg to express to you my best wishes for your election as Governor.

Very sincerely yours,
Ezekiel Fixman."

Mr. Kresel.— Now, gentlemen, may I have the letter which was enclosed with this check and letter?

Mr. Marshall.— We have no letter.

Mr. Kresel.— Have you a copy of the letter which you enclosed, as coming from Mr. Stoiber? A. I did not keep the letter. I did not see the letter, except the letter was enclosed in a sealed envelope which I enclosed with my letter and check.

Q. Have you the letter, Mr. Fixman, which you received from Mr. Stoiber, directing you to send this $100 check? A. I have not.

The President.— How is that material. He did it. Mr. Sulzer got the money. That is the main point.

Q. Did you receive any letter from Mr. Sulzer acknowledging the receipt of this money? A. Not from Mr. Sulzer. I did receive a letter from Mr. Sarecky.

Q. Mr. Sarecky? A. Yes.

Q. Have you that letter? A. I have.

Q. Let me have it? A. (Producing letter.)

Mr. Kresel.— I offer that letter in evidence.

(Letter offered in evidence, received and marked Exhibit M-48.)

Mr. Kresel.— This letter is written on the stationery of the Committee on Foreign Affairs, and reads as follows:

"115 Broadway, New York, *October* 21, 1912.

Ezekiel Fixman, Esq., 55 *Liberty street, New York City:*

My Dear Mr. Fixman.— Your letter to Congressman Sulzer enclosing check for $100 as a contribution from Mr. Stoiber, was duly received by me during the Congressman's absence on a campaign trip up the State. I know Mr. Sulzer appreciates this very much indeed. I want to thank you also for your good wishes. Hope you will write Mr. Stoiber to this effect. With best wishes believe me,

Very sincerely yours,

Louis A. Sarecky,
Secretary."

Mr. Kresel.— You may examine.

The President.—Any cross?

Mr. Hinman.— No cross.

Mr. Kresel.— Now is Mr. Trier here?

Mr. Trier.— Yes.

Mr. Stanchfield.— Be sworn, please.

The Clerk.— Mr. Trier, you do solemnly swear that the evidence which you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer, as Governor of the State, shall be the truth, the whole truth and nothing but the truth, so help you God.

The Witness.— I do.

The Clerk.— What is your full name?

The Witness.— Ralph Trier.

RALPH TRIER, a witness called in behalf of the Managers, having been first duly sworn in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Stanchfield:

Q. Where do you reside? A. New York City.

Q. What is your occupation? A. I am vice-president of the Frank V. Strauss Company.

Q. In the fall of 1912, did you receive any communication from Mr. Strauss with reference to a contribution to the candidacy of Mr. Sulzer's gubernatorial campaign?

Mr. Herrick.— We object to the form of that question.

Mr. Stanchfield.— I have not endeavored in that question — it is preliminary — it does characterize the communication. I will withdraw it.

Q. Did you receive a cable from Mr. Strauss? A. I did.

Q. Will you produce it, please? A. Yes.

Q. Is the cablegram which you hand me the cable you received from him at that time from Paris? A. It is.

Mr. Stanchfield.— I offer that in evidence.

(Cablegram offered in evidence, received and marked Exhibit M-49.)

Mr. Stanchfield.— "Paris, Program"—

Q. "Program" is the cablegraphic address of Frank V. Strauss & Company? A. It is.

Q. F. V. Strauss & Company is a concern engaged in the publication of theatrical programs? A. Yes.

Mr. Stanchfield.— "Paris, Program, N. Y., Give Herman Sulzer, Candidate Governor one thousand dollars with my compliments. Have cabled him can have more."

Q. Pursuant to that authorization by cable, did you write Mr. Sulzer enclosing a check? A. I did.

Mr. Stanchfield.— Will you produce the letter?

Mr. Herrick.— We have no letter?

Q. Have you a copy of the letter? A. I have.

Q. Produce it, please. A. (Witness refers to copy of letter in letterpress copy book.)

Mr. Stanchfield.— We offer in evidence this letter.

(Letter offered in evidence received and marked Exhibit M-50.)

Mr. Stanchfield.— I will read it.

"October 5th, 1912.

Mr. William Sulzer, 175 *Second avenue, City.*

Dear Sir.— We are in receipt of a cable from Mr. Strauss instructing us to send you the enclosed check for $1,000 with his heartiest congratulations and best wishes for your success. Will you please acknowledge receipt to us, and oblige,

Yours very truly,

Frank V. Strauss & Company."

Q. Have you the check that was enclosed in that letter? A. No. I have not. That check was lost.

Q. That check you say was lost? A. Yes.

Q. Did you subsequently receive from someone representing Mr. Sulzer a notice to the effect that no check had been enclosed in that letter? A. I did.

Q. Thereupon did you stop payment of it at the bank? A. We did.

Q. Thereupon, did you make out a duplicate check? A. Yes, sir.

Q. And mail it to Governor Sulzer? A. Yes, sir.

Q. I hand you that check and ask you whether or no the check I now show you is the duplicate check? A. Yes, sir.

Mr. Stanchfield.— I offer that in evidence.

(Check offered in evidence, received and marked Exhibit M-51.)

Duplicate.

Mr. Stanchfield.— "FRANK V. STRAUSS & COMPANY,
THEATRE PROGRAM ADVERTISING
NEW YORK, *October 5th,* 1912.

Duplicate.

(There is some advertising matter on one end of the check which I will not read.)

Pay to the order of William Sulzer ———— One thousand dollars.

FRANK V. STRAUSS & Co."

Certified at the Metropolitan Bank. Endorsed "William Sulzer," and "Pay to the order of the Manhattan Company, New York, Boyer, Griswold & Co."

Q. That check was paid in due course? A. It surely was.

Q. And received back by you from your bank among your vouchers? A. It was.

Q. Did you receive any acknowledgment from that check? A. We did not, although we found out it was received on account of it being the second check sent.

Q. But you got no formal acknowledgment of it? A. No, sir.

By the President:

Q. You know it was paid? A. We telephoned to find out this time whether it was received.

Q. And you got an answer over the telephone? A. Yes, sir.

Q. From whom, the bank of Mr. Sulzer? A. It was a woman's voice; she represented herself to be Mrs. Sulzer.

Mr. Stanchfield.— That is all.

Cross examination by Mr. Hinman:

Q. Do you recall, Mr. Trier, that is, are you able to tell us whether this first check of $1,000 was sent through the mail by you or by messenger? A. It was sent through the mail.

Q. Can you tell to what address it was sent? A. To 175 Second avenue.

Q. And was that the residence of William Sulzer and his wife at that time? A. The telephone book gave it so.

Q. How did you learn, if you can tell me, that the first check was not inclosed with the letter? A. We were telephoned to that effect.

Q. By whom? A. By a woman who said she was Mrs. Sulzer.

Q. The second check, the one that is now produced here, the duplicate check, was that also sent to the same address? A. It was.

Q. By mail? A. By mail; yes, sir.

Q. Do you know whether or not Mrs. Sulzer is related to Frank V. Strauss by marriage? A. There is some relationship, yes, through marriage.

Mr. Hinman.— That is all.

Senator Thompson.— By request, I want to ask this witness one question. That is:

By Senator Thompson:

Q. Did you make an entry in the books of the Strauss Company of this payment of $1,000 at the time? A. There certainly was.

Q. Have you got the entry here? A. I have the check book.

Q. Will you state what it was charged to, or what it was charged for? A. You can see for yourself, if you look. It is right here (referring to check book). It says here, "William Sulzer, $1,000, account of F. V. Strauss."

Q. Was there any other entry made on the books of the concern; that is your check book stub, isn't it? A. Yes, sir.

Q. I mean on the regular books of the concern was there any entry went through them? A. An entry of a similar kind.

Q. Have you got that book with you? A. No, I was not asked to bring that.

Q. You do not recollect then what the entry is or what it is for? A. I can show you where the money has been returned to us, if you like. I can show you where the $1,000 has been returned to us through this check book.

Q. Who returned it? A. Mr. Strauss.

By Mr. Stanchfield:

Q. In other words, to clear this up, what you mean is — A. It is a personal check.

Q. That check sent to Mr. Sulzer was the check of Strauss & Co? A. Yes.

Q. And that check, in due course of time, on your books, was charged up to the personal account of Mr. Strauss? A. Yes.

Q. And it was paid by Mr. Strauss back to the corporation? A. That is it, exactly.

By Senator Thompson:

Q. Was there anything stated in the charge made to Mr. Strauss as to what the disbursement was for? A. No, sir.

Mr. Stanchfield.— It states on the original cablegram "For William Sulzer."

Mr. Marshall.— No, it does not, it says for "Herman Sulzer."

Mr. Stanchfield.— I will read it, "Give Herman Sulzer, candidate for governor, One thousand dollars." Do you mean to take the point that was not meant for William Sulzer?

Mr. Herrick.— No.

Mr. Hinman.— Just one question.

By Mr. Hinman:

Q. When was this $1,000 repaid by Frank V. Strauss to Frank V. Strauss & Company, if you can tell me, about the date? A. I have the exact date; I have the entry.

By the President:

Q. Was it repaid, or was it charged to his account? A. It was repaid.

Q. Then find the entry? A. It was repaid to us on October 16, 1912.

By Mr. Hinman:

Q. Where is Frank V. Strauss now? A. I had a cable from him that he is in Paris.

Q. How long ago did you receive that cable? A. I think it was last Monday.

Q. How long since Frank V. Strauss has been in the United States, as far as you know? A. Since about the middle of last May.

Q. He has been away since that time? A. Yes, sir.

Q. Continuously? A. Yes, sir.

Mr. Brackett.— Mr. Jacob H. Schiff, recalled.

JACOB H. SCHIFF, recalled:

Direct examination by Mr. Brackett:

Q. You stated in your testimony yesterday that you had given all of the conversation between you and William Sulzer with respect to the $2,500 check, and the purposes for which it was given; am I correct? A. I think I have.

Q. How long had you known William Sulzer? A. Quite a number of years.

Q. Had he frequently been in your office? A. Not very.

Q. Occasionally? A. Occasionally.

The President.— Try to speak a little louder.

Q. I think you said that he gave you the name of Louis A. Sarecky? A. He did.

Q. How did he come to do that? How did the name of Sarecky come to be mentioned? A. When Mr. Sulzer said draw a check to the order of Louis A. Sarecky.

Q. Did he tell you who Sarecky was? A. He did not.

Q. Did he give it to you on a piece of paper so you had the spelling of the name? A. I am not sure of that.

Q. Did he tell you whether Sarecky had any relations, business or otherwise, with him? A. He did not.

Q. Did he give you — A. May I answer the question just before a little more fully so as to be entirely correct? The name of Louis A. Sarecky was put down on a piece of paper. Who wrote that down I do not know, whether one of my stenographers or Mr. Sulzer, I cannot say.

I have lately looked at that piece of paper, having by accident discovered it, and I find the name was not plainly spelled, and I wrote across it exactly how it was spelled. Probably Mr. Sulzer told me how it was spelled.

Q. Well, have you the piece of paper here? A. I have torn it up.

Q. When? A. About two weeks ago I should say.

Q. Since you knew that this subject was under investigation? A. I paid no attention to that piece of paper. I accidentally discovered it and tore it up.

The President.— You cannot prove anything against your witness.

Mr. Brackett.— I have no wish to.

Q. Either Mr. Sulzer wrote the name or he told how the name was spelled and you wrote it or he signed? A. That is correct.

Q. That is one of the ways? A. Yes.

Q. Did he state to you any reason why he wanted the check made to Sarecky? A. He did not.

Q. Or why he did not want it to himself? A. He did not.

Q. Did you ask him why? A. No.

Q. Had you ever given Mr. Sulzer checks before? A. Not that I can recollect.

Q. Do I understand you to say — no. This was after he was nominated for Governor? A. It was about the 16th of October.

Q. Was it given to him for the reason that he was a candidate for Governor? A. I suppose if he had not been a candidate for Governor that such discussion would not have come up at all.

Q. And per consequentia the check would not have been given? A. I don't know about that. I think that if Governor Sulzer had come to me at any time for a check for $2,500 I would have given it to him.

Mr. Brackett.— I ask that that be stricken out as not responsive.

Mr. Fox.— The question did not call for anything else except a conclusion. He asked him per consequentium.

The President.— The latter part of that answer does not seem to be called for.

Mr. Marshall.— Will your Honor please have the question read? It will indicate that he was calling for a conclusion. He says per consequentium.

The President.— Read the question and answer, stenographer.

(The stenographer thereupon read the question and answer referred to as follows): Q. And per consequentia, the check would not have been given? A. I don't know about that. I think that if Governor Sulzer would have come to me at any time for a check for $2,500 I would have given it to him.

The President.— I don't think the last part answers the question. He answers he doesn't know.

Q. Had you heard of any change of circumstance of William Sulzer at any time previous to this $2,500 check except his nomination? A. I don't understand your question.

Mr. Brackett.— I will ask the stenographer to read it to you.

Q. (The stenographer thereupon read the last question propounded to the witness as follows): "Had you heard of any change of circumstance of William Sulzer at any time previous to this $2,500 check except his nomination?" A. What do you mean by change of circumstance?

Q. Whether he had suffered reverses or troubles of any kind except his nomination? A. I had not.

Q. You had not for at least a year prior to this time given him any checks, and you do not recall that you ever did? A. I do not recall that I ever gave him any money of any kind.

Q. You knew that he was at the time a member of Congress? A. I did, I do.

Q. And you did then? A. I did then.

Q. And you knew that as a member of Congress he received a salary? A. I know that members of Congress receive salaries.

Mr. Marshall.— May it please the Court, I object to this in this investigation. It is entirely immaterial. It is apparent that it is foreign to the general inquiry.

The President.— He has told you he knew. There is no use of asking the witness whether a member did not receive it; he did not receive the salary if he did not draw it. It is a matter of common knowledge that members of Congress receive salaries.

Mr. Brackett.— You mean it is common knowledge that they receive a salary?

The President.— Yes.

Mr. Brackett.— I don't know exactly what it is, but it is a matter of common knowledge, I am sure.

The President.— You can find it out very readily.

Q. Is the notation on the front of the check, on the corner, and which you say was not put on until the year,— some time in the year 1913 — just prior to the time that the check went to Mr. Richards, the counsel for the Frawley Committee. Is that in your own handwriting? A. It is.

Q. Did you intend to put on there truthfully and correctly the purpose for which the check had been drawn?

Mr. Marshall.— May it please the Court, this is cross examination of the witness and it is a repetition of what was gone into on the examination yesterday. Mr. Kresel asked the same question, and the whole thing has been gone over. This is a reopening of the case.

The President.— Part of the question is a repetition. But you are allowed to ask the question. Now, he cannot impeach any witness of course; he cannot ask discrediting questions; he cannot show that he has made other declarations elsewhere. But he can really cross examine him, yes, by the way of getting it out.

Mr. Marshall.— It is merely repetition, that is all.

Mr. Brackett.— The stenographer will now read the question.

Judge Bartlett.— Mr. President, may I just call attention —

The President.— What is it you say, Judge Bartlett?

Judge Bartlett.— Mr. President, may I just call attention to the fact that all these questions and matters were really gone over yesterday in almost exactly the same question. Mr. Brackett, you will find —

The President.— He may answer the question, as it has been put, and then they needn't go any further.

Mr. Brackett.— What page?

Judge Bartlett.— On pages 524 and 525. The witness made almost the same answer.

Mr. Marshall.— May I repeat that question?

The President.— The question as asked him may as well be answered. That is the quickest way to dispose of it. It can't do any harm. Repeat the question to the witness, Mr. Stenographer.

The stenographer read the question as follows: "Did you intend to put on there truthfully and correctly exactly the purpose for which the check had been drawn?"

The Witness.— I refer you to my answer of yesterday and let it stand as the answer for today.

The President.— Just say now, did you or didn't you?

The Witness.— This was written.

Q. Yes or no, Mr. Schiff.

The President.— No, he cannot answer yes or no. He can't say whether it was written—

The Witness.— I would like to have the answer of yesterday read. Can I have the privilege to have the answer of yesterday read.

The President.— No, I think you can answer without referring to that. Just answer the question yes or no.

The Witness.— Repeat the question again please.

The President.— You are not limited to yes or no. Repeat the question, Mr. Stenographer.

The question was read by the stenographer as follows: "Did you intend to put on there truthfully and correctly exactly the purpose for which the check had been drawn?"

The Witness.— I don't believe I can answer the question correctly without answering fuller than by yes or no.

The President.— I say you are not limited to answering yes or no. You are not limited to that answer yes or no.

The Witness.— I must answer yes or no?

The President.— No, it is not necessary you should answer yes or no. You can answer it fully.

The Witness.— I can answer it in full?

The President.— Yes, that is what I say.

The Witness.— All right. Mr. Richards was standing at my desk, and asked for the check. I promised to give him the check. As I explained yesterday that was not my own check. It was the check of my firm, Kuhn, Loeb & Company, and since there might be no misunderstanding and no misinterpretation why that was the check of Kuhn, Loeb & Company I put on such notation in a quick way and gave it to Mr. Richards.

Q. Was this check in any way charged on the books of Kuhn, Loeb & Company? A. It was charged to my account.

The President.— That is your personal account?

The Witness.— To my personal account.

Q. Was it then charged or was the $2,500 then charged in your personal books in any way? A. It was charged by Kuhn, Loeb & Company to my personal account and by reason of this it passed into my books as expenses.

Q. Well, was it charged in your personal books? A. As my expense account.

Q. Your own expense account? A. My own expense account.

Q. Was there any notation of the purpose for which it had gone on your own personal books? A. Except that it had gone to William Sulzer, no doubt, or to Louis A. Sarecky. There certainly was no explanation.

Q. No explanation of the purpose for which it went? A. There wasn't.

Q. Do you speak from recollection or from reasoning? A. I speak from the way I know my books are kept.

Q. Then, knowing the system, you reason that there was no entry made of the reason it was given to Mr. Sulzer? A. That is correct.

Q. Although it is without any examination of the entry itself? A. It is.

Q. You have stated that Mr. Sulzer could have had $2,500 at any time?

The President.— That was stricken out at your request, Senator.

Mr. Brackett.— I will not recite them. I will ask the question directly.

Q. Mr. Sulzer couldn't get $3,000 on request, could he? A. He asked me as I have stated yesterday, I think, " will you not give any more," and I said no, and he was satisfied.

Q. Then $2,500 was the limit, was it? A. That I felt at that time.

Q. Had you had any feeling on the subject before that time? A. I had not.

Q. As to the amount? A. I had not.

The President.—Well, I think you can pass that.

Mr. Brackett.—A single word.

Q. Was there anything said by you in that conversation as a reason why you did not give him more than $2,500, other than you have stated? A. Yes.

Q. State it. A. I suppose Mr. Kresel, to whom I very freely told all that happened abused my confidence and said from such question, but I will tell it notwithstanding.

Mr. Brackett.— I move to strike out.

Mr. Marshall.—That is a proper answer.

Mr. Brackett.— I should be permitted to state for the record, that Mr. Kresel has told me nothing with respect to it but it is a chance shot.

The President.—You can argue for it.

Mr. Brackett.— I want to see whether there is anything further said. That is all.

The President.— Then call his attention. What was the answer? Read the answer Mr. Stenographer.

The answer was read by the stenographer as follows: "I suppose Mr. Kresel to whom I very freely told all that happened abused my confidence"—

The President.— Strike that out. That will all go out.

Witness, what the counsel asks you is whether there is any other reason why you refused to make it any more than $2,500, other than that which you have already said? A. Yes.

The President.— Did you give him any reason when he said he wanted more, or would like more?

The Witness.— I stated to Mr. Sulzer the reason.

The President.— That is what we want, what you said to Mr. Sulzer.

The Witness.— I must answer that a little more fully if the Court will permit me.

The President.—Yes.

The Witness.— Mr. Kresel —

The President.—Witness, keep right to the point of what transpired between you and Mr. Sulzer. You cannot go beyond that or outside of it.

The Witness.— I shall have to say the entire circumstances. I cannot without injustice to myself answer without giving the full circumstances.

The President.—You must confine yourself. You cannot give it any fuller than the Court allows you. Tell what transpired between you and Mr. Sulzer on that subject.

Mr. Marshall.— May it please the Court, I don't think the question put by the Court was the question asked by Mr. Brackett.

Mr. Brackett.— Precisely.

Mr. Marshall.— I think Mr. Brackett's question called for a reason.

Mr. Brackett.— Or for anything further said.

The President.— The last question was, was anything further said, I think, or I must have misunderstood.

Mr. Brackett.— That is right.

Mr. Marshall.— I would like to have Mr. Brackett's question read.

The stenographer read the question as follows:

"Was anything said by you in that conversation as a reason why you did not give him more than $2,500, other than you have stated."

The President.— That is the point he said in the conversation.

The Witness.— I cannot answer it.

The President.—You have already said that he wanted more or asked for more.

The President.— You told him no, that was only — or you would not give him any more. Was there anything more than that said? Did you tell him why you wouldn't give him more?

The Witness.— Yes.

The President.— What did you tell him?

The Witness.— I told him some time before he was nominated Mr. Kresel and Mr. Einstein, an attorney of New York, had called on me and asked me to interest myself in Mr. Straus' campaign, and since I said I would, provided Mr. Sulzer was not nominated, since if Mr. Sulzer was nominated, I would have to

vote for Mr. Sulzer, because I thought he was entitled to my support and that I had given $1,000 to Mr. Kresel and Mr. Einstein for the Straus campaign, and as I probably would not get that back I couldn't give him any more.

Q. Was that all that was said on the subject? A. That was all that was said on the subject.

Q. Was the $1,000 given to the Straus campaign after Mr. Straus had been nominated? A. After Mr. Straus had been nominated.

Mr. Marshall.— No questions.

Mr. Kresel.— That is all, Mr. Witness.

Senator Murtaugh.— Mr. President —

The President.— One moment.

Senator Murtaugh.— I would like to know why the witness wrote the words " campaign expenses " on the check.

The President.— I think he has been asked that, but you may ask him again. Why did you write campaign expenses? The Senator wants to know.

The Witness.— It was just a note of expression; a hurriedly-made note of expression.

Senator Duhamel.— Mr. President.

The President.— Senator Duhamel.

Senator Duhamel.— I would like to ask if he wrote the memorandum voluntarily or if anyone suggested it?

The President.— Repeat your question again, please.

Senator Duhamel.— Did he write that memorandum on the face of the check voluntarily or was it suggested by anyone?

The Witness.— I wrote it upon my own inspiration you might say.

Senator Walters.— Mr. President.

The President.— Senator Walters.

Senator Walters.— May I ask whether the $1,000 given to the Straus fund was for campaign expenses?

The Witness.— It was.

Senator Sage.— Mr. President.

The President.— Senator Sage.

Senator Sage.— May I ask if that answer regarding the $1,000 given to the Straus campaign fund and what followed it be read by the stenographer. A good many did not hear it.

The President.— Read it, Mr. Stenographer.

The stenographer read as follows: "I told him some time before he was nominated Mr. Kresel and Mr. Einstein, an attorney of New York, had called on me and asked me to interest myself in Mr. Straus' campaign, and I said I would, provided Mr. Sulzer was not nominated, since if Mr. Sulzer was nominated, I would have to vote for Mr. Sulzer, because I thought he was entitled to my support and that I had given $1,000 to Mr. Kresel and Mr. Einstein for the Straus campaign, and as I probably would not get that back I couldn't give him any more."

The President.— Is that all you wish, Senator Sage?

Senator Sage.— Yes.

Senator Walters.— Mr. President.

The President.— Senator Walters.

Senator Walters.— I would like to know how the witness differentiates between the contribution to Straus and the contribution to the Sulzer campaign or to Governor Sulzer?

The President.— Can you hear that question?

The Witness.— How I differentiate?

The President.— Read the question.

The question was read by the stenographer as follows: "Mr. Walters: I would like to know how the witness differentiates between the contribution to Straus and the contribution to the Sulzer campaign or to Governor Sulzer?"

The Witness.— I don't differentiate. Mr. Straus might have used that $1,000 for whatever he pleased, if he wanted to.

Senator Foley.— Mr. President.

The President.— Senator Foley.

Senator Foley.— I would like to ask a question. Mr. Schiff, I would like to know if you had any communication from Governor Sulzer since this matter was first disclosed in the last two months?

The President.— Repeat the question, Mr. Stenographer.

The question was read by the stenographer as follows: "Senator Foley: I would like to ask a question. Mr. Schiff, I would like to know if you had any communication from Governor Sulzer since this matter was first disclosed in the last two months?"

The Witness.— I had not, except that he invited me to come to Albany, which I declined.

Senator Foley.— How long ago was that?

The Witness.— Last time I should say was about four or five weeks ago. To be correct, his Secretary invited me to come to Albany to see Mrs. Sulzer who was ill, which I declined. I only have seen Governor Sulzer once since he is in office.

Senator Foley.— Was that after the disclosure of the contribution by you to him?

The Witness.— It was. I received that letter, you mean?

Senator Foley.— Yes.

The Witness.— That was only a few weeks ago.

Senator Foley.— Have you got a copy of that letter with you?

The Witness.— I have not, but I can tell you what was in it exactly, almost exactly.

Senator Foley.— I understand. Did you communicate or did anybody communicate with you on behalf of Mr. Sulzer in New York City and discuss this matter of the contribution by you?

The Witness.— Yes.

Senator Foley.—And who was that?

The Witness.— In the first place two of the counsel came in, Mr. Richards and Mr. Kresel and discussed it, and then this gentleman, (indicating) Mr. Frankenstein came in to see me and said that if I would accept it Governor Sulzer—

The President.— That is hardly necessary, unless the Senator wants what transpired.

Mr. Marshall.— We don't object.

The Witness.—If I would accept it Governor Sulzer would be very glad to refund to me this $2,500, to which I replied that I could not now, since the matter was under investigation, permit the status to be changed.

Senator Foley.— You refused to accept a refund of the $2,500?

The Witness.— I didn't.

Senator Foley.— I say, you refused to accept a refund of the $2,500?

The witness.— It was never tendered to me. The question was only asked whether I would accept it, to which I said no.

Senator Foley.— I understand, the offer was made you to refund it.

The Witness.— I cannot say such a definite offer was made. I was asked whether I would accept it. In exact words, so far as I remember they were "Governor Sulzer would like to repay you this $2,500," and to that I answered I could not accept them now since this matter is under investigation.

Senator Foley.— Did you talk to anybody else connected with the defence of Governor Sulzer?

The Witness.— No.

Senator Foley.— Nobody else at all?

The Witness.— Nobody else at all.

Senator Foley.— Thank you.

Senator Thompson.— Mr. President.

The President.— Senator Thompson.

Senator Thompson.— I would like to ask the witness who is Mr. Frankenstein.

The President.— Will you please remember, Senator, it is as difficult for me to hear you here as it is for you there.

Senator Thompson.— I want to ask who was Mr. Frankenstein that he spoke of, that talked to him; what relation did he have with Governor Sulzer?

The Witness.— I have never seen Mr. Frankenstein before, and when he came to my office I asked him the very same question, what relation he had to Governor Sulzer and he said to me he was his former law partner.

Senator Thompson.— Yesterday you said at the time you contributed $2,500 you had no doubt that Governor Sulzer was to be elected. Now, did you have any ideas on the subject when you contributed to Mr. Straus in reference to his election?

The Witness.— As I said before, I believed, when Mr. Straus' friends came to me and asked me to interest myself in this campaign, Mr. Straus being a personal friend of mine, Governor Sulzer had not been nominated, Governor Sulzer had not been nominated for several weeks yet, I only had heard that Mr. Sulzer was a candidate for the nomination and I felt if he was nominated I would have to support him.

Senator Thompson.— Just one more question. Were those contributions for the purpose of establishing a more intimate relationship between yourself and the persons to whom they were contributed?

The Witness.— When Mr. Straus was nominated, it was my hope that he would be elected. But when, after several weeks, Governor Sulzer was nominated, my hopes changed; I felt that Governor Sulzer was, as far as I was concerned — as I felt concerned, better entitled to election, and my hopes were that he would be elected, and feeling strongly of his merits, on his merits, I had very little doubt that he would be elected.

The President.— Call your next witness. That is all, Mr. Witness.

Mr. Marshall.— That is all.

Mr. Fox.— That is all.

Mr. Kresel.— Mr. Uhlmann.

The Clerk.— You do solemnly swear that the evidence which you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer as Governor of this State, shall be the truth, the whole truth and nothing but the truth, so help you God.

Mr. Uhlmann.— I do.

The Clerk.— What is your full name?

Mr. Uhlmann.— Simon Uhlmann.

SIMON UHLMANN, a witness called on behalf of the Managers, having been first duly sworn, in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Kresel:

Q. Mr. Uhlmann, what is your business? A. I am retired. I was formerly in the hop business, but I have retired from the business.

The President.— I don't believe any of the Senators heard that. Will you try to speak louder, Mr. Witness.

The Witness.— Yes.

Judge Collin.— Cannot that answer be read, Mr. President?

The President.— Mr. Witness, try and tell it yourself, your business?

The Witness.— Yes. I was formerly in the hop business, from 1861 until 1907. Then I retired from the business.

Q. Well, are you now connected with any brewing business? A. Yes.

Q. And what brewery are you connected with? A. With the Hinckel Brewing Company.

Q. Where is that located? A. At Albany.

Q. Albany. You know Governor Sulzer? A. I do.

Q. On the 18th of October, 1912, did you go to see Governor Sulzer at his office? A. I did.

Q. In New York City? A. Yes.

Q. Now, will you state what conversation you had with him then? A. I went to his office. My conversation was a brief one. I congratulated him on his nomination and hoped that he would be elected.

Q. What else did you say to him? A. I said I would make a contribution, and that was all I did say.

Q. A contribution to what?

Mr. Fox.— What did you say?

Mr. Kresel.— That is right. What did you say about the contribution?

The President.— What did you say?

Mr. Kresel.— That is what I said.

Q. What did you say about the contribution? A. I said I would contribute to his campaign fund.

Q. Well, what did he say in answer to that? A. He told me to see his secretary.

Q. Well, did you subsequently see his secretary? A. After I had remained in the office, I don't think I was there more than five minutes, I stepped in the outer office and there I saw a young man, and I asked him to tell me who his secretary was, for I never seen him before, and he mentioned the name to me.

Q. And then did you go back to your office? A. I did.

Q. And did you write a letter? A. I instructed my secretary to write a letter to him.

Q. And did you draw a check? A. I did.

Q. Now, have you the letter with you? Have you a copy of the letter? A. I have got the copy book here.

Q. Yes. Now, please turn to the copy of the letter. A. (Witness produces book and examines same.) I have it.

Q. To whom is that letter addressed? A. To Louis A. Sarecky.

Q. And is that the name that was given to you as Governor Sulzer's secretary? A. Yes, sir.

Mr. Kresel.— Now, I offer this letter in evidence. Shall I read it?

Mr. Herrick.— Read it in.

Mr. Kresel.— October 18, 1912.

"Mr. Louis A. Sarecky, *No.* 115 *Broadway, New York:*

My Dear Sir.— Enclosed please find my check to your order for $300, which is my voluntary contribution to your campaign fund.

Very truly yours,

Simon Uhlmann."

Now, have that marked.

(The letter offered in evidence was received and marked Exhibit M-52.)

The Witness.— It is signed by my initial by my secretary, I think.

Mr. Kresel.— I didn't see the initial.

Mr. Marshall.— May I look at that?

(Exhibit M-52 is passed to counsel.)

Q. What did you say, Mr. Uhlmann about initials here? A. It is,— I instructed my secretary to write that letter, which is not signed by me, but it is signed "Simon Uhlmann, per M. M."

The President.— Signed in your name, by your secretary, by your authority?

The Witness.— Yes, sir.

Q. Now, I show you Exhibit 33, and ask you whether that is the check that went with the letter (counsel passes paper to witness). A. (After examining) That is the check.

Mr. Kresel.—This check reads:

"New York, *October* 18, 1912.

THE STANDARD TRUST COMPANY OF NEW YORK

Pay to the order of Louis A. Sarecky
Three hundred dollars.

Simon Uhlmann."

Indorsed: "Louis A. Sarecky." Deposited in the Mutual Alliance Trust Company.

By the President:

That came back to you through the bank? A. Yes, sir.

By Mr. Kresel:

Q. Did you receive any acknowledgment of this check, a letter? A. I did not.

Mr. Kresel.— That is all.

Mr. Herrick.— No questions.

The President.— That is all, Mr. Uhlmann.

Mr. Kresel.— I call Judge Conlon.

The Clerk.—You do solemnly swear that the evidence which you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer, as Governor of this State, shall be the truth, the whole truth and nothing but the truth, so help you God.

Mr. Conlon.— I do.

The Clerk.—What is your full name?

Mr. Conlon.— Lewis J. Conlon.

Lewis J. Conlon, a witness called on behalf of the Managers, having been first duly sworn in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Stanchfield:

Q. Judge Conlon, where do you reside? A. New York City.

Q. And your profession is what? A. I am a lawyer.

Q. You were for quite a period of years a judge in the city of New York? A. Yes, sir.

Q. On what bench were you a judge? A. The City Court.

Q. Are you acquainted with the respondent, William Sulzer? A. Yes, sir.

Q. You have known him how long? A. Thirty years — about thirty years.

Q. And over all that period of time have your relations with him been friendly and intimate? A. Yes, sir.

Q. And do you live in the — and vote in the same election district in which he resides? A. Why, I did. Not latterly. I did at one time.

Q. And have you often, when he has been a candidate for office, presented his name at conventions in nomination? A. I have.

Q. So that your acquaintance with him is intimate, and your relations are more than ordinarily friendly? A. I was friendly, and have been during all that period.

Q. Now, did you see Governor Sulzer after his nomination for Governor? A. Yes.

Q. Had you previous to your interview with him, had a talk with any of your friends in regard to raising funds to aid him in his campaign?

Mr. Herrick.— One moment, we object to that, raising contributions. Leave out the purpose.

The President.— What is the objection?

Mr. Marshall.— That is objected to as leading, and as giving the conversation with other parties in the absence of Governor Sulzer.

The President.— If he testifies to conversations with him, it is competent.

Mr. Stanchfield.— Previous to his conversation with Governor Sulzer I asked that question.

The President.— I don't see that his conversation with other persons is competent.

Q. Did you see Governor Sulzer after his nomination? A. Yes, sir.

Q. Where first?

The President.— Don't misunderstand. You can go back of the nomination of the respondent, as to conversations had with him.

Mr. Stanchfield.— I follow your Honor's ruling.

The Witness.— Repeat the question.

Mr. Stanchfield.— The stenographer will read it to you.

Q. (The stenographer thereupon read the question referred to as follows: Where first?) A. I think at the Manhattan Club when he came down from the convention.

Q. You are a member of the Manhattan Club, Judge? A. Yes, sir.

Q. And is Mr. Abram I. Elkus a member of the Manhattan Club? A. He is.

Q. Mr. William F. McCombs? A. Yes, sir.

Q. John Lynn? A. Yes.

Q. Lyman A. Spalding? A. Yes.

Q. Edward F. O'Dwyer? A. Yes, sir.

Q. John W. Coxe? A. Yes, sir.

Q. Is Mr. Morgenthau a member? A. Yes, I think he is a member now.

Q. And is Theodore W. Myers? A. I beg your pardon?

Q. Is Theodore W. Myers? A. Yes.

Q. The Manhattan Club is generally recognized as a Democratic Club, is it not? A. Yes, it is.

Q. My adversary, Judge Herrick, is a distinguished member of it? A. He is.

Q. Now, did you have any talk with Governor Sulzer at the Manhattan Club, upon the occasion to which I am calling your attention, on the subject of making some collection for him to aid him in his campaign? A. Not at the Manhattan Club.

Q. Where first did you have a talk with him on the subject of collecting money for him for his campaign? A. At his house.

Mr. Herrick.— That assumes that he had a conversation to raise money for the campaign.

The President.— The last question was almost an answer to that effect. You can ask it.

The Witness.— At his house.

Q. About when was that, Judge? A. Why, it was probably seven or eight or ten days after the convention, immediately following the convention.

Q. At that time, will you state what conversation you had with him on that subject, that is the subject of collecting checks for his campaign? A. I went down to his house, Second avenue and 11th street, in the morning, about ten o'clock, and they were getting breakfast, his wife was getting his breakfast, and I went to his room, and we shook hands and talked over things generally and about the campaign, the possibilities of success and the line of campaign that he intended to undertake, and he told me he was going up state, going to make a state wide campaign, and going to make it as active as he could during the time he had; and we talked in that way for a time. I then told him that I had brought him some money to assist him in his work, and I then gave him a check for $200, signed by Mark Potter, payable to my order, and endorsed, by me, I think, that is my recollection of it.

Q. Will you look at the check, Judge, of which you are now speaking, and see if you are not mistaken about giving him that check. (Counsel passes paper to witness.) I want to call your attention to it to keep you from error. Didn't you in fact get that cashed and give him the cash? A. (After examining)— No.

Q. Well, look at the endorsement on it? A. Well, that is my endorsement.

Q. Who is it payable to, whose order? A. Nobody else, it was my order.

Q. Who was it payable to? A. It was payable to me, and I endorsed it.

Q. Did you give it to the governor in that form? A. Yes sir, I gave it to him in that form. I never cashed it.

Q. What is your bank? A. The Nassau bank. It never went through my bank.

Q. I care nothing about the fact. I thought you had it cashed, from the endorsement. A. No, I gave the check —

Q. (Interrupting) Very well. A. May I continue?

Q. Yes. A. And at the same time, I had another check, and I am a little in doubt now whether it was Lyman Spalding's check for $100, or John Delehanty's check for $110. My impression as to it is that it was John Delehanty's check for $110. I may, however, be mistaken about that.

Mr. Stanchfield.— I offer in evidence this check.

The President.— Admit it.

Mr. Hinman.— Before it is admitted, I would like to see it.

(Paper is passed to counsel.)

(The check offered in evidence was received and marked Exhibit M-53.)

Q. Now, will you produce, Judge, the check of Mr. Delehanty. Haven't you — A. (Interrupting) I had it in my pocket yesterday. Mr. Delehanty came here to-day and I returned it to him.

Q. Is he at this time? A. He is at this time, and it is with him.

Q. Will you state at this time — we will get it for you. A. Yes. I brought it up here with me, and I returned it to Mr. Delehanty.

Mr. Stanchfield.— Your Honor will pardon me until I can get that check.

Q. I hand you a check, Judge Conlon, and ask you whether or no that is the check that Mr. John Delehanty — that you gave to Mr. Sulzer, on the occasion with reference to which you are now speaking? (Counsel passes paper to witness.) A. (After examining) It is.

Mr. Stanchfield.— I offer that in evidence.

(The check offered in evidence was received and marked Exhibit M-54.)

Mr. Stanchfield.— I will read it in evidence:

"NEW YORK, *October* 14, 1912.

BANK OF THE METROPOLIS

Pay to Lewis J. Conlon or order $110.

JOHN DELAHANTY."

Q. You handed that to Mr. Sulzer at the same time? A. I think I did. I handed it to him, and I think that was the occasion.

The President.—We understand it.

By the President:

Q. It is either that you think or Lyman Spaulding? A. Yes, either one, but I handed that I know.

By Mr. Stanchfield:

Q. Did you at any time upon that occasion give him any other contribution in cash or checks other than perhaps the Spaulding check? A. I gave him a $100 bill as my own contribution.

Q. In cash? A. In cash.

Q. Anything more did you give him at that time? A. Not on that occasion.

Q. You state that you told him at the time as I recollect it, that you gave it to aid him? A. Yes, sir.

Q. What did you say to him on that subject? A. Well, it was a general conversation. I do not recall exactly what I said. I spoke in that general way, that I brought something to aid him or help him out, terms like that.

Q. Did you qualify that expression in any way that you remember now? A. I think I mentioned that I believed he was short of funds, or I thought he was, and that I intended to do what I could to collect some money for him, and that I hoped to get more, and he thanked me for what I had done and for what I expected to do.

Q. Let me call your attention, if that is all you recall, to a statement here, and ask you if you will read it to refresh your recollection (handing paper to witness)? A. That is substantially as I testified.

Q. What else did you say to him as to the purpose for which you were collecting and giving him this money? A. It was to help him along with the necessary work of the campaign that he was entering upon. I did not limit the use of it in any way, nor did I attempt to direct him what he should do with it.

Q. Judge, I call your attention to another check, the so-called Spaulding check? A. Yes, sir, that is the check that I gave Mr. Sulzer.

Mr. Stanchfield.— I offer that in evidence.

(Check offered in evidence received and marked Exhibit M-55.)

Q. While they are examining that check, Judge, you stated unqualifiedly that this conversation was with Mr. and not Mrs. Sulzer. A. It was with Mr. and Mrs. Sulzer, they were both in the room, they were more or less in and out; she was preparing breakfast, but he sat at the breakfast table and I left it on the table.

Q. And the conversation you have related was with him? A. With him.

Mr. Stanchfield.— I will read Exhibit 55:

"New York, *October* 10, 1912.

FULTON TRUST COMPANY OF NEW YORK

Pay to the order of William Sulzer $100.

Lyman A. Spaulding,"

with the indorsement "William Sulzer" upon the back of it.

Q. Now, have you related all the conversation that you can recall with Mr. Sulzer at the time of the delivery of the three checks that I have offered in evidence and the $100 in cash? A. I think I have.

Q. Did you at that time have in your possession — I am asking you now to refresh your recollection and because Mr. Lynn thinks it is the fact — did you have with you at the time John Lynn's check for $500? A. No, I do not think I ever handled that check at all.

Q. You know Mr. Lynn; Mr. Lynn is a man you know very well? A. I know him very well.

Q. And a member of the Manhattan Club? A. Yes, and here now as a witness.

Q. I hand you a check for $500, and ask you whether or no that is John Lynn's signature to that check? A. It is; it is all in his handwriting, I think.

Q. It is all in his handwriting? A. Yes, sir.

Q. And it is indorsed by Mr. Sulzer? A. It is indorsed by Mr. Sulzer — purports to be.

Q. Are you quite certain in your recollection that you did not have that check with you at the time? A. I am quite certain; I know I did not have it when I visited his home.

Q. Did you have it later? A. No.

Q. As a matter of recollection? A. No, I never had that check.

Mr. Stanchfield.— I will offer that check while I have it here.

(Check offered in evidence received and marked Exhibit M-56.)

Mr. Stanchfield.— I will read this check:

"*October* 10, 1912.

GUARANTY TRUST COMPANY OF NEW YORK

Pay to the order of William Sulzer $500.

JOHN LYNN."

Endorsed, "William Sulzer."

The President.— We will adjourn.

Mr. Hinman.— Just two questions to ask the witness.

The Witness.— I would like to go home to-night.

Mr. Stanchfield.— I am not through with the witness.

The President.— Adjourn court.

The Clerk.— All witnesses summoned to appear by either side shall be here to-morrow morning at 10 o'clock.

The President.— Adjourn court, Crier.

The Crier.— Hear ye, hear ye, hear ye, all persons having any further business before this High Court of Impeachment held in and for the State of New York may depart hence and appear here to-morrow morning at 10 o'clock to which time this court now stands adjourned.

Thereupon at 5 P. M. the Court adjourned to meet again on Friday, September 26, 1913, at 10 A. M.

EXHIBIT M-12.

Deposited by

WILLIAM SULZER

IN

THE FARMERS' LOAN AND TRUST CO.

NEW YORK, *Oct.* 8, 1912.

	Dollars.	Cents.
Bills	$1,400	00
Specie	.....	.....
Checks, 103	1,000	00
Checks, 107	1,000	00
Checks, N. C.	500	00
Checks, Eq.	250	00
Checks, 113	250	00
	$4,400	00

D. I. R.

EXHIBIT M-15.

Deposited by

WILLIAM SULZER

IN

THE FARMERS' LOAN AND TRUST CO.

NEW YORK, *Sept.* 12, 1912.

	Dollars.	Cents.
Bills	$3,500	00
Specie	.....	.....
Checks	.....	.....

D. I. R.

EXHIBIT M-16.

Deposited by

WILLIAM SULZER

IN

THE FARMERS' LOAN AND TRUST CO.

NEW YORK, *Sept.* 25, 1912.

	Dollars.	Cents.
Bills	$4,000	.....
Specie	.....	.....
Checks	.....	.....
	$4,000	.....

D. I. R.

EXHIBIT M-20.

Deposited by

WILLIAM SULZER

IN

THE FARMERS' LOAN AND TRUST CO.

NEW YORK, *Oct.* 10, 1912.

	Dollars	Cents
Bills	$2,500	00
Specie	....	..
Checks (2)	1,000	00
D. I. R.	$3,500	00

EXHIBIT M-21

Deposited by

WILLIAM SULZER

IN

THE FARMERS' LOAN AND TRUST CO.

NEW YORK, *Dec.* 28, 1912.

	Dollars	Cents
Bills	$3,000	00
Specie	....	..
Checks	....	..

MANAGERS' EXHIBIT M-22.

Dr. William Sulzer in account with the Farmers' Loan and Trust Company, Cr.

1912.					
Sept.	5. To cash	.....	.....	.....	$5 00
	6.	.....	.....	.....	50 00
	7.	.....	.....	.....	75 00
	7.	.....	.....	.....	50 00
	9.	.....	.....	.....	4 00
	9.	.....	.....	$8 00	.....
	9.	.....	.....	50 00	58 00
	10.	.....	$25 00	.....	.....
	10.	.....	25 00	14 89	64 89
	13.	.....	.....	.....	100 00
	14.	.....	.....	.....	25 00
	14.	.....	.....	.....	25 00
	16.	.....	.....	.....	20 00
	18.	.....	50 00	7 50	.....
	18.	.....	25 00	50 00	132 50
	19.	.....	.....	.....	100 00
	20.	.....	.....	.....	50 00

1912.						
Sept.	21.	...	.....	.....	.....	$20 00
	21.	...	.....	.....	.....	25 00
	23.	...	.....	.....	.....	15 00
	23.	...	.....	.....	.....	9 00
	24.	...	.....	.....	.....	100 00
	25.	...	.....	.....	.....	50 00
	26.	...	.....	.....	.....	191 31
	26.	...	.....	.....	$10 00	.....
		...	.....	.....	66 93	76 93
		...	.....	.....	10 00	.....
	27.	...	$154 75	$25 00	.....	.....
		...	.....	100 00	150 80	440 55
		...	.....	.....	44 25	.....
	28.	...	.....	.....	165 00	209 25
	30.	...	.....	.....	.....	50 00
Oct.	1.	...	.....	.....	14 00	30 75
		...	.....	.....	16 75	.....
	3.	...	.....	.....	.....	20 00
	16.	...	.....	.....	.....	900 00
Dec.	19.	...	.....	.....	.....	75 00
	24.	...	.....	.....	.....	18 24
1913.						
March	7.	...	.....	.....	.....	254 16
Aug.	5.	...	.....	.....	.....	2,500 00
Sept.	20.	To balance.	.....	.....	.....	22,278 92
						$28,013 50

1912.						
Sept.	3.	By balance.	.....	.....	$5,112 58	.....
	3.	...	.....	.....	625 00	.....
	12.	...	.....	.....	3,500 00	.....
	19.	...	.....	.....	200 00	.....
	23.	...	.....	.....	1,253 75	.....
	25.	...	.....	.....	4,000 00	.....
Oct.	8.	...	.....	.....	4,400 00	.....
	10.	...	.....	.....	3,500 00	.....

1912.					
Dec.	1.	Interest . . .	. . . . .	$61 13	. . . . .
	16.	. . .	. . . . .	2,625 00	. . . . .
	19.	. . .	. . . . .	1,230 43	. . . . .
	28.	. . .	. . . . .	3,000 00	. . . . .
1913.					
March	19.	. . .	. . . . .	616 66	. . . . .
April	7.	. . .	. . . . .	150 00	. . . . .
	15.	. . .	. . . . .	575 00	. . . . .
	18.	. . .	. . . . .	416 66	. . . . .
May	20.	. . .	. . . . .	416 66	. . . . .
June	1.	Interest . . .	. . . . .	330 63	. . . . .
					$28,013 50
1913.					
Sept.	20.	By balance.	. . . . .	$22,278 92	. . . . .

MANAGERS' EXHIBIT M-26½.

Please examine and report as soon as convenient.

Mr. Louis A. Sarecky,

in account with

THE MUTUAL ALLIANCE TRUST COMPANY,

35 Wall Street.

No. 1 JJ.

Dr.			Cr.		
1912.			1912.		
Sept.	5	$2.	Aug.	31, Balance.	$435.
	5	34.	Sept.	10	93.60
	7	5.		30	34.75
	8	50.	Oct.	1	203.13
	10	67.10		5	160.
	10	25.		8	890.
	11	50.		11	1275.
	17	41.45		15	3350.
	17	20.		19	1010.
	20	10.		19	25.
	21	5.		21	535.
	23	7.15		24	910.
	24	6.60		26	566.77
	26	40.		30	147.70
Oct.	1	74.80	Nov.	4	1453.33
	2	1.50		7	1475.
	3	2.30		12	400.
	3	50.		14	498.75
	3	10.		20	115.59
	5	10.		21	30.30
	7	29.75	Dec.	27	60.
	8	5.85		31	372.93
	8	10.			
	8	40.			
	10	500.			
Forward,		$1107.70	Forward		$14,066.85

No. 2 JJ.

Dr.			Cr.	
1912.			1912.	
	Forward,	$1107.70	Forward	$14,066.85
Oct.	11	75.		
	14	1.70		
	14	20.		
	15	5.61		
	16	225.45		
	18	6.		
	18	25.10		
	18	15.		
	18	10.		
	21	16.17		
	22	369.		
	22	29.10		
	22	14.06		
	22	6.10		
	22	25.		
	23	31.69		
	23	1.75		
	23	2.50		
	24	550.		
	25	1250.		
	25	1.80		
	25	330.40		
	25	330.40		
	25	1252.50		
	26	90.79		
	26	5.57		
	Forward,	$6,398.39	Forward	$14,066.85

No. 3 JJ.

1912.	Dr.		1912.	Cr.
	Forward,	$6,398.39	Forward	$14,066.85
	26	1.05		
	28	6.25		
	28	550.		
	28	18.		
	28	4.		
	28	1.30		
	29	14.		
	29	2.70		
	30	50.		
	30	150.		
	30	5.		
	30	12.		
	31	1.60		
	31	8.75		
	31	25.		
Nov.	1	351.		
	2	500.		
	2	5.		
	4	50.		
	4	2.50		
	6	300.		
	6	10.		
	6	6.15		
	7	200.		
	7	50.		
	7	8.04		
	Forward,	$9,596.98	Forward	$14,066.85

No. 4 JJ.

1912.	Dr.		Cr.	1912.	
	Forward,	$9,596.98	Forward		$14,066.85
Nov.	7	2.50			
	7	600.			
	7	75.			
	7	315.			
	8	75.			
	9	150.			
	9	547.79			
	9	150.			
	9	3.55			
	9	2.04			
	11	10.			
	11	20.			
	12	10.			
	13	861.50			
	13	5.			
	13	44.			
	15	60.50			
	15	25.			
	15	25.			
	16	20.			
	18	30.			
	19	15.			
	20	30.			
	21	3.			
	21	25.			
	22	10.			
	Forward,	$12,721.86	Forward		$14,066.85

No. 5 JJ.

Dr.			Cr.	
1912.			1912.	
	Forward,	$12,721.86	Forward	$14,066.85
Nov.	23	8.		
	23	4.		
	25	10.		
	26	10.		
	26	1.50		
	26	12.50		
	27	5.40		
	29	24.		
	29	5.		
	30	20.		
	30	10.		
Dec.	2	30.		
	3	10.		
	3	18.		
	4	31.42		
	4	25.		
	5	40.		
	6	25.		
	9	30.		
	11	44.60		
	14	15.		
	16	5.		
	18	10.		
	19	77.50		
	21	25.		
	Forward,	$13,308.78	Forward	$14,066.85

No. 6 JJ.

Dr.			Cr.	
1912.			1912.	
	Forward,	$13,308.78	Forward	$14,066.85
Dec.	21	133.		
	27	15.		
	27	20.		
	28	28.		
	28	12.35		
	28	23.25		
	30	12.28		
	31	25.		
	Balance,	489.19		
		$14,066.85	Dec. 31, 1912. . .	$14,066.85
			Balance. .	$489.19

August 15, 1913.

I hereby certify that the foregoing statement comprising six sheets numbered 1 to 6 inclusive, each bearing my initial is a true copy of the original records.

CHARLES J. JUSTER,

Notary Public, Queens County. Certificate filed in New York County, No. 9. New York County Register's No. 5044. Commission expires March 30, 1915.

MANAGERS' EXHIBIT M-27.

Twenty-one deposit slips in Mutual Alliance Trust Co.

DEPOSITED IN

THE

MUTUAL ALLIANCE TRUST COMPANY

of New York,

35 Wall Street.

By Louis A. Sarecky, Sept. 10, 1912.

Check $93.60.

(Stamped on face of slip — " Mutual Alliance Trust Company of New York. Credited Sep. 10, 1912. 35 Wall Street.")

Deposited in Mutual Alliance Trust Company by Louis A. Sarecky, Sept. 30, 1912.

Check $34.75. (Stamped credited Sept. 30, 1912.)

Deposited in Mutual Alliance Trust Company by Louis A. Sarecky, Oct. 1, 1912:

Check 1/10	$208 34
	21
	$208 13

(Pencil notation on slip " Treas. of U. S. Washington, D. C.") Stamped credited Oct. 1, 1912.

Deposited in Mutual Alliance Trust Company by Louis A. Sarecky, Oct. 5, 1912:

Check 1/10	$100
D	10
76	50
	$160

Ex. cash 10 cents. (Stamped credited Oct. 5, 1912.)

Deposited in Mutual Alliance Trust Company by Louis A. Sarecky, Oct. 8, 1912:

Checks D	$50
Home Ti Co. Bklyn	60
82	10
17	25
Citizens Tr. & Saving Bank, Columbus, O., 1/10	100
111	100
40	25
3	100
45	50
81	50
D	100
45	25
45	25
45	25
Kings County Tr. Co. Bklyn	50
48	100
54	5
	$890

10/c. Ex. Cash. (Stamped credited Oct. 8, 1912.)

Deposited in Mutual Alliance Trust Company by L. A. Sarecky, Oct. 11, 1912:

Checks, 117	$100
American Trust Co., St. Louis	50
D	50
D	250
	25
	250
	50
	500
	$1,275

(Stamped credited Oct. 11, 1912.)

Deposited in Mutual Alliance Trust Company by Louis A. Sarecky, Oct. 15, 1912:

Checks D	$250
D	100
	25
	200
	100
	50
	50
	50
Hempstead Bank	2,600
Hempstead, L. I.	25
	$3,350

(Stamped credited Oct. 15.)

Deposited in Mutual Alliance Trust Company by Louis A. Sarecky, Oct. 19, 1912:

Check, 91	$25 00

(Stamped credited Oct. 19, 1912.)

Deposited in Mutual Alliance Trust Company by Louis A. Sarecky, Oct. 19, 1912:

(Top figures heading deposit slip $25.00 canceled with lead pencil.)

Checks:

Peter Doelger	$250 00
Hugo Hauf	10 00
J. E. Gander & Co	25 00
Nelson Smith	100 00
John Armstrong	10 00
Morris Tekulsky	50 00
Andrew M. Shaefer	40 00
James Hurley	50 00
Geo. H. Neville	50 00

Checks:

David Gerber	$150 00
W. F. Carrell	10 00
W. R. Dowd	15 00
McGrau Coxe	200 00
Samuel Bauman	50 00

(Total in ink canceled and lead pencil total of $1,010 supplied.)
Ex. cash 20/c.
(Stamped credited Oct. 19, 1912.)

Deposited in Mutual Alliance Trust Company by Louis A. Sarecky, Oct. 21, 1912:

Checks:

A. Storhi 12	$100 00
W. Penney 40	50 00
Jn. Calamity B	110 00
L. Schesinger D	200 00
E. Neufeld 77	25 00
R. J. Cassdy 45	50 00
	$535 00

(Stamped credited Oct. 21, 1912.)

Deposited in Mutual Alliance Trust Company by Louis A. Sarecky, Oct. 24, 1912:

Checks:

S. Uhlman 167	$300 00
C. G. Fuil 45	10 00
W. H. Miller 44	250 00
R. Foster 23	250 00
W. E. Curtis 2	100 00
	$910 00

(Stamped credited Oct. 24, 1912.)

Deposited in Mutual Alliance Trust Company by Louis A. Sarecky, Oct. 26, 1912:

Checks:

Henry Block	$100 00
Chas. Thostay	100 00
Standard Finance Co	25 00
J. H. Gardner	200 00
John B. Judson, Gloversville, N. Y	100 00
T. Schlesinger	30 26
Max Rosen	11 51
	$566 77

Ex. cash 10/c
(Stamped credited Oct. 26, 1912.)

Deposited in Mutual Alliance Trust Company by Louis A. Sarecky, Oct. 30, 1912:

Checks:

Bird S. Color D	$100 00
M. F. O'Doughue, Washington, D. C. Loan Tr. Co.	10 00
Therese Schlesinger	12 70
Samuel Peyser	25 00
	$147 70

Ex. cash 10/c
(Stamped credited Oct. 30, 1912.)

Deposited in Mutual Alliance Trust Company by Louis A. Sarecky, Nov. 4, 1912:

Bank notes cash	$100 00

Checks:

Jos. W. Kay 113	50 00
L. N. Rosenbaum ¼ Nat. City Bank Seattle Wash.	100 00
J. B. Gray 1/10 Yonkers Nat. Bank	50 00
L. I. Doyle 54	100 00

B. Guawm (?) d	$20 00
J. F. Gwathmierus	100 00
Thos E. Rush 4	5 00
W. E. Genglus 77	25 00
C. G. Pinkney 11	200 00
F. Z. Cisna Treas. W. S. 1/10	208 33
	$1,453 33

55/c Ex.
(Stamped credited Nov. 4, 1912).

Deposited in Mutual Alliance Trust Company by Louis A. Sarecky, November 7, 1912:

Bank notes	$950 00
John F. O'Brien	50 00
Daniel M. Brady	100 00
Isaac Purdy ?, Mt. Kisco, N. Y.	250 00
Joe Standfast	25 00
O. J. Gude	100 00
	$1,475 00

Ex. cash 25/c
(Stamped credited Nov. 7, 1912).

Deposited in Mutual Alliance Trust Company by Louis A. Sarecky, Nov. 12, 1912:

Checks:

Treas. W. S. 1/10	$125 00
Treas. W. S. 1/10	125 00
Washington 8	150 00
	$400 00

Ex. cash 25/c
(Stamped credited Nov. 12, 1912).

Deposited in Mutual Alliance Trust Company by Louis A. Sarecky, November 14, 1912:

Checks:

Jacob A. Jacobs, Montreal		$500 00
		1 25
		$498 75

(Stamped credited Nov. 14, 1912.)

Deposited in Mutual Alliance Trust Company by Louis A. Sarecky, Nov. 20, 1912:

Bank notes		$100 00
Checks 1/10		5 00
	D	4 01
	D	6 58
		$115 59

Ex. cash 10/c

(Stamped credited Nov. 20, 1912.)

Deposited in Mutual Alliance Trust Company by Louis A. Sarecky, November 21, 1912:

Checks 54	$7 80
45	22 50
	$30 30

(Stamped credited Nov. 21, 1912).

Deposited in Mutual Alliance Trust Company by Louis A. Sarecky, Dec. 27, 1912:

Bank notes	$80 00

(Stamped credited Dec. 27, 1912).

Deposited in Mutual Alliance Trust Company by Louis A. Sarecky, Dec. 31, 1912:

Bank notes	$350 00
Check	22 93
	$372 93

(Stamped credited Dec. 31, 1912).

MANAGERS EXHIBIT M-28.

No. 1670 NEW YORK, *October* 31, 1912.

THE MECHANICS & METALS NATIONAL BANK.

OF THE CITY OF NEW YORK.

Pay to the order of Louis Sarecky, Secretary &c,..... $500.00
Five hundred and no/100.....Dollars.
(Signed) THOMAS E. RUSH.

(Printed on check on left end.)
THOMAS E. RUSH.

Endorsed on back, L. A. Sarecky, Secretary. Endorsed, Pay to the order of the National Bank of Commerce Nov. 4, 1912, The Mutual Alliance Trust Company of New York at Wall Street. Also endorsed, Received through the New York Clearing House Nov. 4, 1912 Receiving Teller, Endorsements guaranteed by Natl. Bank of Commerce, of New York.

MANAGERS EXHIBIT M-30.

No. NEW YORK, *Oct. 10th,* 1912

METROPOLITAN TRUST COMPANY.

OF THE CITY OF NEW YORK.

Pay to the order of William Sulzer.....
One hundred .....Dollars.
$100.00 (Signed) WILLIAM V. ELIAS.

(On left hand side of check) 49 Wall Street.

Endorsed on back Wm. Sulzer, L. A. Sarecky.

Endorsements on back, Received payment through the New York Clearing House Oct. 11, 1912, receiving teller, Endorsements guaranteed Nat. Bank of Commerce in New York.

Pay to the order of the National Bank of Commerce Oct. 11, 1912, The Mutual Alliance Trust Co. of New York, 35 Wall Street.

MANAGERS EXHIBIT M–31.

NEW YORK, *Oct.* 10, 1912.

E. C. BENEDICT & CO.,
80 BROADWAY,

Pay to the order of Wm. Sulzer,
Two hundred and fifty.....Dollars.
$250. (Signed) E. C. BENEDICT.

Endorsed on back, Wm. Sulzer, L. A. Sarecky.
Received payment through the New York Clearing House, Oct. 14, 1912, 3rd Teller, Endorsements guaranteed Nat. Bank of Commerce in New York. Pay to the order of the National Bank of Commerce Oct. 11, 1912, the Mutual Alliance Trust Co. of New York, 35 Wall Street. Received Payment Oct. 14, 1912, E. T. Endorsements guaranteed, Nat. Bank of Commerce in New York.

MANAGERS EXHIBIT M–32.

No. NEW YORK, *Oct.* 16, 1912.

THE GARFIELD NATIONAL BANK.
5TH AVE. & 23RD STREET.

Pay to the order of William Sulzer,.....$50.00
Fifty .....Dollars.
(Signed) MORRIS TEKULSKY.

Endorsed on back Wm. Sulzer, L. A. Sarecky. Pay to the order of the National Bank of Commerce Oct. 19, 1912, The Mutual Alliance Trust Co. of New York, 35 Wall Street. Received payment through the New York Clearing House, Oct. 19, 1912, Receiving Teller, Endorsements guaranteed, Nat. Bank of Commerce, in New York.

MANAGERS EXHIBIT M–33.

No. 1063. NEW YORK, *Oct.* 18th, 1912.

THE STANDARD TRUST COMPANY.
OF NEW YORK,
Through New York Clearing House Association.

Pay to the order of Louis A. Sarecky.....

Three hundred and 00/100.....Dollars.
$300.00

(Signed) SIMON UHLMANN.

(On left hand end) 25 Broad Street.

Endorsed on back Louis A. Sarecky. Pay to the order of the National Bank of Commerce Oct. 24, 1912, The Mutual Alliance Trust Company of New York, 35 Wall Street.

Received Payment through the New York Clearing House, Oct. 24, 1912, Mail Teller, Endorsements guaranteed Nat'l Bank of Commerce of New York.

MANAGERS EXHIBIT M-34.

PETER DOELGER,

LAGER BEER BREWERY.

Bottling Department.

No. 7375. NEW YORK, *Oct.* 14, 1912.

Pay to the order of William Sulzer.....$250.00
Two hundred and fifty and 00/100.....Dollars.
To the Yorkville Bank. Peter Doelger,
New York. (Signed) CHARLES P. DOELGER,
Attorney.

Stamped Not over Two hundred and sixty dollars.

Endorsel on back Wm. Sulzer, L. A. Sarecky. Pay to the order of the National Bank of Commerce Oct. 19, 1912. The Mutual Alliance Trust Co. of New York, 35 Wall Street. Received payment through the New York Clearing House S. Oct. 19, 1912, Receiving Teller, Endorsements guaranteed, Nat. Bank of Commerce in New York.

MANAGERS EXHIBIT M-35.

No. NEW YORK, *October* 9, 1912.

GUARANTY TRUST COMPANY OF NEW YORK.

Pay to the order of Wm. Sulzer, ...
Five hundred ..... 00/00 ..... Dollars
$500.00. (Signed) WM. MCCOMBS.

Endorsed on back Wm. Sulzer. L. A. Sarecky. Pay to the order of the National Bank of Commerce, Oct. 11, 1912. The Mutual Alliance Trust Company of New York, 35 Wall Street. Received payment through the New York Clearing House, Oct. 11, 1912, Receiving Teller. Endorsements guaranteed Nat. Bank of Commerce in New York.

MANAGERS EXHIBIT M-36.

NEW YORK, *October* 19, 1912. No. 4931.

THE CHEMICAL NATIONAL BANK.

Pay to the order of Hon. William Sulzer.....$100.00.
One hundred 00/00.....Dollars.

(Signed) A. N. STOIBER,
New York Managing Atty.

Endorsed on back, William Sulzer, L. A. Sarecky. Pay to the order of the National Bank of Commerce, Oct. 21, 1912. The Mutual Alliance Trust Company of New York, 35 Wall Street. Received payment through New York Clearing House, Oct. 21, 1912, Receiving Teller. Endorsements guaranteed, Nat. Bank of Commerce in New York.

MANAGERS EXHIBIT M-37.

No. 2, Santa Fe, NEW YORK, *Oct.* 24, 1912.

W. K. COLER & CO., BANKERS.

No. 43 Cedar Street.

Pay to the order of William Sulzer,
One hundred and no/100 .....Dollars.
$100.00

(Signed) BIRD S. COLER.

Stamped on face, PAID, W. H. Coler & Co., New York.

Endorsed on back, Wm. Sulzer. Louis A. Sarecky. Pay to the order of the National Bank of Commerce Oct. 30, 1912, The Mutual Alliance Trust Co. of New York, 35 Wall street.

Received Payment Oct. 31, 1912, Endorsements guaranteed, Nat. Bank of Commerce in New York.

MANAGERS' EXHIBIT M-38.

No. 3847 NEW YORK, *Nov.* 1, 1912.

MUTUAL ALLIANCE TRUST CO.

Pay to the order of William J. Sulzer,
One hundred and 00/000 ..... Dollars.
$100.00

(Signed) J. TEMPLE GWATHMEY,

Printed on left hand end, J. Temple Gwathmey, 3 South William Street.

Stamped on face, Mutual Alliance Trust Co., New York, (35 Wall St.) Endorsed on back, Wm. Sulzer, Louis A. Sarecky.

MANAGERS' EXHIBIT M-39.

No. 2136. NEW YORK CITY, *Nov.* 2, 1912.

FRANKLIN TRUST COMPANY.

166 Montague Street, Brooklyn.

Pay to the order of William Sulzer,
Fifty and no/100 .....Dollars.
$50.00.

(Signed) JOHN F. O'BRIEN.

Printed on left end, John F. O'Brien.

Endorsed Wm. Sulzer. L. A. Sarecky. Pay to the order of The National Bank of Commerce Nov. 7, 1912, The Mutual Alliance Trust Co. of New York, 35 Wall Street.

Received Payment through the New York Clearing House, Nov. 17, 1912, Receiving Teller, Endorsements guaranteed Nat. Bank of Commerce, in New York.

SENATE CHAMBER,

ALBANY, N. Y., *September* 26, 1913.

Pursuant to adjournment the Court convened at 10 a. m.

PRESENT:

Hon. EDGAR M. CULLEN, Presiding Judge,
and
THE JUDGES OF THE COURT OF APPEALS,
and
THE SENATORS OF THE STATE OF NEW YORK.

APPEARANCES:

THE MANAGERS:

Same as heretofore.

Counsel for the Managers:

Same as heretofore.

Counsel for the Respondent:

Same as heretofore.

The President.— Call the roll, Clerk.

The Clerk thereupon called the roll and found a quorum to be present with the following absentees: Senator Griffin, Senator Healy, Senator McClelland, Senator Murtaugh, Senator O'Keefe, Senator Sage, Senator Seeley.

The President.— Crier, open court.

The Crier.— Hear ye, hear ye, hear ye, all persons having any business before this Court of Impeachment, held in and for the State of New York, may now draw near, give their attendance and they will be heard.

Senator Pollock.— Mr. President, I ask to have the printed record at page 557 corrected by showing my appearance at yesterday's session. It is marked that I was absent.

The President.— If you will please state the correction again.

Senator Pollock.— I ask to have the record corrected by showing my presence yesterday. I was present.

The President.— If you were present, it will be corrected.

Mr. Kresel.— May it please the Court: We omitted yesterday to offer in evidence the letter received by Mr. Hawley in regard to his contribution. I want to offer it now.

Letter offered in evidence received and marked Exhibit M-57.

Mr. Kresel.— This letter is written on the stationery of the Committee on Foreign Affairs and reads as follows:

"115 Broadway, New York, *October* 28, 1912.

"George C. Hawley, Esq., *Dobler Brewery, Albany, N. Y.*

"My Dear Mr. Hawley.— Just a line to thank you for all you are doing in my behalf, and to tell you how deeply I appreciate it. With best wishes and hoping to see you before long,

"Believe me, Sincerely yours,

"William Sulzer."

Mr. Kresel.—At the same time, may I offer two letters, one received by William Hoffman and one by William J. Elias. Two letters offered in evidence received and marked Exhibits M-58 and M-59.

Mr. Marshall.—Will you allow me to look at them?

Mr. Kresel.— Certainly. The letter to Mr. Hoffman reads as follows:

"115 Broadway, New York, *October* 28, 1912.

"Mr. William Hoffman, *55th street & 3rd avenue, New York city:*

"My dear Mr. Hoffman.— Just a line to thank you for all you are doing in my behalf, and to tell you how deeply I appreciate it. With best wishes and hoping to see you before long, believe me,

"Sincerely yours,

"William Sulzer."

The letter to William J. Elias is as follows:

"115 Broadway, New York, *October* 19, 1912.

"William J. Elias, Esq., 403 *East 54th street, New York city:*

"My dear Mr. Elias.— Many, many thanks for your very kind letter and enclosure. I appreciate all you say and all you have done. You are indeed a good friend of mine. With best wishes, believe me,

"Very sincerely your friend,

"William Sulzer."

Mr. Stanchfield.— Is Judge Conlon in the room?

Mr. Conlon.— Here.

Mr. Stanchfield.— Resume the stand.

Lewis J. Conlon, a witness called on behalf of the Managers, recalled for further direct testimony, having been previously sworn, testified as follows:

Direct examination continued by Mr. Stanchfield:

Mr. Stanchfield.— The record, if the presiding judge please, fails to disclose the reading in the record of the check of Mr. Potter, offered in evidence yesterday, of October 10, 1912.

The President.— If you will read it to-day in evidence and let it appear in to-day's record will that answer your purpose as well, Mr. Stanchfield?

Mr. Stanchfield.— Yes. I purpose now to read it.

"New York, *October* 10, 1912.

"NATIONAL BANK OF COMMERCE IN NEW YORK.

"Pay to the order of L. J. Conlon two hundred dollars.

"(Signed) Mark W. Potter.

"Endorsed: L. J. Conlon."

Q. Judge Conlon, at the time of the adjournment last evening, we had, I think, concluded the first conversation you had with Governor Sulzer, in which you delivered to him certain checks. Now, did you see him again before the election? A. Yes, sir.

Q. Do you recall where? A. I saw him at the Manhattan Club.

Q. What transpired between you on that occasion with reference to contributions, by check or cash? A. Shortly after this interview at his house, I should think a few days, maybe a week, I met him in the Club and gave him a check, either the check of John Delehanty or the check of Lyman Spalding, now in evidence.

Q. Have you completed your answer? A. Yes.

Q. Did you give him any other check at that time? A. Later on I did.

Q. That was upon still another occasion? A. Yes, on another occasion.

Q. Being, numerically speaking, the third occasion? A. Yes.

Q. Now, where did your interview upon the third occasion take place? A. In the club, the Manhattan Club.

Q. And can you give us about what time it was, in the month? A. It was about election, or within a day or two of the election, or approximately, well, two days, perhaps, I should think, in my recollection.

Q. What transpired between you and candidate Sulzer on that occasion? A. I handed him a check for $100, drawn by Mr. Daniel Brady, payable to Mr. Sulzer, and told him it was a contribution from Mr. Brady, and handed it to him.

Q. Contribution for what?

Mr. Marshall.— One moment.

The Witness.— I don't know that I added anything to it, only it was a contribution from Mr. Brady and I handed it to him.

Q. Will you read that last sentence of your statement, please, where my thumb is? A. I read it.

Q. Does that refresh your recollection? A. Yes.

Q. As to what you said? A. That is true, the phrasing.

Q. Just tell us what is true? A. True that I said it was a contribution to help him along in his campaign.

Q. Did you deliver him any other moneys or checks or evidences of finance during the campaign? A. No.

Q. Did you later receive any acknowledgment from candidate Sulzer or Governor-elect Sulzer for any of these contributions? A. I think I received a letter from Sarecky, his secretary, after

the first interview at his house acknowledging the receipt of my money.

Q. Have you that acknowledgment with you? A. No, I didn't keep it.

Q. Have you heard these various acknowledgments read here, some of them this morning? A. Yes.

Q. Was this in that usual rubber stamped form? A. No, it it was in substance that Sulzer had directed him to acknowledge the receipt of the money and to thank me for it.

Q. You got a direct acknowledgment then of the receipt of money? A. Yes.

Q. I notice in the statement filed by the Governor-elect, marked Managers' Exhibit 3, that you are put down among the names of contributors as No. 14 for the amount of $110. That should have been — A. That is a mistake.

Q. That is a mistake? A. Yes.

Q. That should have been a contribution, should it not, from Mr. John Delehanty? A. That was the check of John Delehanty payable to my order and endorsed by me, and perhaps that is what led them to think it was my contribution.

Q. The same check you testified yesterday you delivered to Mr. Sulzer? A. Yes, sir.

Q. Judge, you know Theodore W. Meyers very well? A. Yes, sir.

Q. Do you not? A. Yes, sir.

Q. Known him a great many years? A. A great many years.

Q. He has been a one time comptroller of New York? A. Yes, sir.

Q. And one time President of the National Democratic Club? A. Yes, sir.

Q. And is now abroad, is he not? A. I think he is; reported to be abroad anyway.

Q. And are you familiar with the fact that he is a man of large means? A. Yes, sir; reputed to be a man of very large means.

Q. Well, I mean as a matter of common repute? A. Yes.

Q. I hand you a check —

Mr. Stanchfield.— I will state to counsel upon the other side that I am doing this to save time.

Q. That is the signature, is it not, to that check of Theodore W. Meyers, in your judgment? A. Yes, I should say it was.

Mr. Stanchfield.— I offer that in evidence.

Mr. Marshall.— No objection.

The check offered in evidence was received in evidence and marked Exhibit M-60.

Mr. Stanchfield.— I read in evidence, if the Presiding Judge please, Exhibit M-60:

No. 10850 NEW YORK, *October* 10, 1912.

THE FARMERS' LOAN & TRUST COMPANY

Pay to the order of bearer one thousand dollars.

THEODORE W. MEYERS.

It bears upon the back of it the rubber stamp: "Pay to the order of the Manhattan Company" signed by "Boyer, Griswold & Company."

I will state for the general information of the members of the Court that these rubber stamp endorsements of Boyer, Griswold & Company are so faint that I am not at all certain whether they appear upon your photographs or not, but if any of you have the curiosity you may see the original.

The President.— Is there any dispute of the rubber stamp on them?

Mr. Stanchfield.— No, it is conceded on the other side.

Mr. Marshall.— We consented to its going in evidence.

Mr. Stanchfield.— The witness is yours, gentlemen.

Mr. Herrick.— Mr. President, one of the members of the Court has suggested that the respondent's counsel stand here as an experiment in cross-examining the witness. With your permission, we will try it.

The President.— Very good. We are willing to make any experiment. If it fails, we will return to the old manner.

Cross-examination by Mr. Herrick:

Q. Judge, before you received this check of Mr. Potter that you have produced here, you had some conversation with him, did you not? A. With Mr. Potter?

Q. Yes. A. Yes, sir.

Q. In relation to Mr. Sulzer's financial condition? A. Yes, sir.

Q. And you made a statement to him in regard to that condition, did you not? A. I expressed an opinion about his finances.

Q. What was that opinion?

Mr. Stanchfield.— That is objected to.

The President.— How is it material?

Q. What was the conversation between you and Mr. Potter?

Mr. Stanchfield.— Objected to upon the ground that it was never imparted to the candidate Sulzer, and not in his presence.

Mr. Herrick.— Possibly true, but we can see the purpose for which the money was given sheds some light upon that.

Mr. Stanchfield.— The purpose for which it was given is reflected in the language of the witness to candidate Sulzer at the moment that he tendered him the check.

Mr. Herrick.— Not entirely.

Mr. Stanchfield.— It cannot be controlled by any private conversation between the witness and Mr. Potter.

Mr. Herrick.— It was a transaction that they introduced. We are entitled to have everything that took place at that time.

The President.— This brings up the question that was discussed to some extent yesterday. It seems to me it would be just as well to dispose of it finally now. I think it is competent, for this reason: The charge, I think it is the sixth, is larceny; that is the term used. On page 8 it says, "Was guilty of larceny."

Now, we have reserved every question as to the sufficiency of the articles, its character, whether they are ground for impeachment or not, and it is entirely possible that there may be different views by the different members of the Court on that question.

Therefore, the parties on each side have the right to introduce evidence to meet any view which the Court, or any of the members of it may entertain on the final submission. Here is charged a larceny. Now, it may not affect the moral culpability of the party, but to meet this the respondent, it seems to me, has the right to show that whatever the delinquency may be, still he was not guilty of the crime of larceny, and could not be convicted therefor if he was indicted by a petit jury. Now, I understand the rule to be in larceny that money delivered by a party to another, if he assents, not subsequent at all, but if his intent at the time was to give him title to the property, that it cannot be the subject of larceny. In other words, even the undisclosed intent of the party, the owner, to the alleged offender, to give him the property, that negatives the idea of technical larceny, and prevents his conviction for the crime of larceny, however great may be the moral culpability of the party. Now, that I understand to be the law as stated in the text books. The last case familiar to me is one in the Court of Appeals, 178 N. Y., I think, People v. Mills. There the conviction was affirmed. That was the question of an attempt to steal certain indictments so that the party indicted might not be prosecuted. That was upheld, the conviction, dissenting Judge Bartlett. That was upheld. The prevailing opinion, written by Judge Vann, showing the distinction between private property and public property, that the act of no one of the officers or the State could amount to an assent to the taking of the property of the State, but he speaks of the difference between that and private ownership.

Now, in that view, I think this testimony is admissible. Of course, gentlemen, when it comes to the determination of the question of fact whether he did really intend, you are not bound by the statement of any witness. It is for you to say whether it was so or not. That is my reason for the decision. I hope some member of the Court will ask for a vote on that.

Judge Werner.— In accordance with the suggestion of the President, I ask for a call of the roll.

Judge Hiscock.— Now, just what will be the question we are to vote on, Mr. Presiding Officer, whether the objection will be sustained?

The President.— Whether the objection will be sustained; but practically, for the information of the Presiding Officer, practically you will construe that as raising the question which the counsel discussed and as to which I have given you my views now. Call the roll, Mr. Clerk.

The Clerk.— Senator Argetsinger.

Senator Argetsinger.— No.

The Clerk.— Judge Bartlett.

Judge Bartlett.— I vote that the testimony, as to the intention of the persons parting with the property, is admissible.

Senator Argetsinger.— Mr. President.

The President.— Senator Argetsinger.

Senator Argetsinger.— It was my intention, Mr. President, to agree with your Honor's decision, in my vote.

Judge Bartlett.— I hope I have made it plain it is mine also.

The President.— Will you speak a little louder.

Judge Bartlett.— I say, I hope I have made it plain that I agree with the views expressed by your Honor.

Senator Brown.— Mr. President.

The President.— Senator Brown.

Senator Brown.— I find, on inquiry, that very few of the Senators in the back of the room understand the question.

The President.— I beg your pardon, Senator Brown.

Senator Brown.— I understand that very few in the back of the Chamber understand the question, and I think it should be stated again before they vote upon it.

The President.— Now, so that you may understand, gentlemen, without putting it formally, all those that vote aye or yes on this question will exclude the testimony and prevent the witness from telling what instructions — what is the man's name that gave you the check?

The Witness.— Mr. Potter.

The President.— Of Potter's instructions, or that Potter gave him. All those who vote, all those who vote no will overrule — I beg your pardon, gentlemen. All those who vote no will vote to sustain the ruling of the Chair and admit the evidence. Now, do you understand the question, Senator Brown?

Senator Brown.— Yes.

Mr. Stanchfield.— Will your Honor pardon me for a moment. It would seem to me as if it would be much clearer if the vote would be taken upon the question as to whether or no the objection should be sustained?

The President.— That is it. Those who vote yes, sustain the objection and exclude the evidence. Those that vote no, allow the evidence to come in.

Mr. Stanchfield.— Now, will the Presiding Judge permit me to state, in the hearing of the Court, the objection of the Board of Managers?

The President.—You have stated it.

Mr. Stanchfield.— No, I haven't stated it; I haven't stated its grounds so that they could hear it.

The President.— You may state the objection, but not to discuss it. That has been done.

Mr. Brackett.— I want, before my associate makes his statement, to suggest this as the question to be decided: Shall the decision of the Presiding Judge stand as the decision of the Court? Isn't that the best way to put the question?

Mr. Marshall.— That is right.

The President.— Well, any way that the gentlemen will understand best; that is the practical point to be arrived at. There is no particular moment how it is put so long as it is understood. In the way it is best understood is the best way to put it.

Mr. Stanchfield.— If the Court please, the position of the Board of Managers is —

The President.— Senator Brown.

Senator Brown.— All right.

Mr. Stanchfield.— The position of the Board of Managers is this: The witness Conlon testified that upon a certain occasion in October, 1912, while Governor Sulzer was a candidate for Governor, he delivered to Governor Sulzer the check of Mark M. Potter for $200, stating to candidate Sulzer at the time of the delivery of the check that it was to aid him in his campaign. Judge Herrick now asks the witness to relate a conversation had between the witness and Mr. Potter, the maker of the check, not in the presence of Mr. Sulzer. And the Managers' objection is that candidate Sulzer was bound by the statement when he took the check, that it was given to him to use in his campaign, and that the respondent may not prove the conversation between the witness and Mr. Potter, the giver of the check, not in the presence of Governor Sulzer. That is the position of the Managers.

Mr. Herrick.— Can I state our position?

The President.— Yes.

Mr. Herrick.— Our position is simply this: The witness on the stand has made two statements, one, that he handed this money, this check to Mr. Sulzer, stating that it was a contribution. Then his attention was called apparently to some statement that he had made before, and he added, to the campaign contribution. The purpose of my question is this. It has been said by the Presiding Judge heretofore that upon a charge of larceny the question of intent of the owner of the property, his willingness to have it taken, was material and competent upon the question of larceny. We propose to show that a revelation of Mr. Sulzer's financial condition was made to Mr. Potter at this time, and he was informed that contributions would be taken up by Judge Conlon — practically, I don't say in words — for the purpose of relieving that situation. Now, that is the purpose of our question. We propose to follow it up — I believe that we can do it — by some additional evidence from Judge Conlon as to what he stated to Mr. Sulzer at the time these moneys were given to him.

The President.— I hold that the testimony is admissible. The question is shall the decision of the Presiding Judge be upheld and the testimony admitted or overruled. Those that vote aye vote for upholding the position of the Presiding Judge. Those who vote no, vote the other way.

The Clerk.— Senator Argetsinger.
Senator Argetsinger.— Aye.

The Clerk.— Judge Bartlett.
Judge Bartlett.— Aye.

The Clerk.— Senator Blauvelt.
Senator Blauvelt.— No.

The Clerk.— Senator Boylan.
Senator Boylan.— Aye.

The Clerk.— Senator Brown.
Senator Brown.— No.

The Clerk.— Senator Bussey.
Senator Bussey.— Aye.

The Clerk.— Senator Carroll.
Senator Carroll.— Aye.

The Clerk.— Senator Carswell.
Senator Carswell.— As I understand the question before the Court, I don't conceive that the situation here with respect to this witness is identical with the situation with respect to the witnesses Schiff and Morgenthau. I am of the opinion that the testimony that is sought to be adduced from this witness is admissible, in that it relates to the manifestation of intent at the time of the transaction, but in the case of the Schiff witness there was apparently no manifestation of that intent. In other words, it was an undisclosed intent both with respect to the respondent Sulzer, or anyone else, and I concur with the Chair in the ruling with respect to this particular evidence, but don't in respect to the past evidence. Aye.

The Clerk.—Judge Chase.
Judge Chase.— The question calls for a conversation between the solicitor of contributions and one of the persons contributing.

I am entirely clear that this testimony should be received. If the question called for the intent, wholly apart from spoken words, I would want to give it further consideration.

I vote to sustain the Chair.

The Clerk.— Senator Coats.
Senator Coats.— No.

The Clerk.— Judge Collin.
Judge Collin.— Aye.

The Clerk.— Judge Cuddeback.
Judge Cuddeback.— Aye.

The Clerk.— Judge Cullen, President.
Judge Cullen.— Aye.

The Clerk.— Senator Cullen.
(No response.)

The Clerk.— Senator Duhamel.
Senator Duhamel.— Aye.

The Clerk.— Senator Emerson.
Senator Emerson.— Aye.

The Clerk.— Senator Foley.

Senator Foley.— Mr. President, on this question I shall vote aye, with the same reservation expressed by Senator Carswell that I should have voted no on the question of the secret intent.

The President.— If there is no manifestation of it.

Senator Foley.— And in contradiction to the express conversation had between the parties at that time. I think further the testimony is admissible, because we have already admitted in evidence the cablegram of Strauss containing a direction as to the $1,000 contribution to Governor Sulzer. I vote aye.

The Clerk.— Senator Frawley.
Senator Frawley.—Aye.

The Clerk.— Senator Godfrey.
Senator Godfrey.— Aye.

The Clerk.— Senator Griffin.
The President.— Excused.

The Clerk.—Senator Heacock.
Senator Heacock.— Aye.

The Clerk.— Senator Healy.
(No response).

The Clerk.— Senator Heffernan.
Senator Heffernan.— Aye.

The Clerk.—Senator Herrick.
Senator Herrick.— Aye.

The Clerk.— Senator Hewitt.
Senator Hewitt.— Aye.

The Clerk.— Judge Hiscock.

Judge Hiscock.— Mr. Presiding Office, I vote aye, and I differentiate between this proposed evidence and some of the other evidence which was offered yesterday in the same way which was so admirably expressed by the Senator on my right. I think there is a vast difference between this evidence which is now proposed, especially under the offer of the counsel, and that evidence which was asked for yesterday; for instance, on the examination of the witness Elkus, where, having sent with his check a letter explicitly and expressly stating the purpose for which it was designed, he was then asked to disclose a silent, unexpressed possible mental operation, bearing on that question.

I vote aye.

The Clerk.— Judge Hogan.
Judge Hogan.— Aye.

The Clerk.— Senator McClelland.
Senator McClelland.— Aye.

The Clerk.— Senator McKnight.
Senator McKnight.— Aye.

The Clerk.— Senator Malone.
Senator Malone.— Aye.

The Clerk.— Judge Miller.
Judge Miller.— Aye.

The Clerk.— Senator Murtaugh.
Senator Murtaugh.— Aye.

The Clerk.—Senator O'Keefe.
Senator O'Keefe.— Aye.

The Clerk.— Senator Ormrod.
Senator Ormrod.— Aye.

The Clerk.— Senator Palmer.
Senator Palmer.— Aye.

The Clerk.— Senator Patten.
Senator Patten.— Aye.

The Clerk.— Senator Peckham.
Senator Peckham.— Aye.

The Clerk.— Senator Pollock.
Senator Pollock.— Mr. President, I vote aye on the question, but I reserve to myself the same reservation as Senator Carswell, and concur in his opinion as to the differentiation between the two questions.

The Clerk.— Senator Ramsperger.
Senator Ramsperger.— Aye.

The Clerk.— Senator Sage.
Senator Sage.— As I was unfortunately detained this morning, and as I have not heard any discussion on this question, I think it is improper that I should vote; and I ask to be excused.

The President.— Yes.

The Clerk.— The Senator is excused. Senator Sanner.
Senator Sanner.— Aye.

The Clerk.— Senator Seeley.
(No response.)

The Clerk.—Senator Simpson.
Senator Simpson.— I vote aye, Mr. President, with the same reservation as Mr. Carswell.

The Clerk.— Senator Stivers.
Senator Stivers.— Aye.

The Clerk.—Senator Sullivan.
Senator Sullivan.— Aye.

The Clerk.— Senator Thomas.
Senator Thomas.— Aye.

The Clerk.— Senator Thompson.
Senator Thompson.— Mr. President, I vote in the affirmative, but with the same reason as stated by Judge Hiscock. I do not agree with the ruling in reference to the Schiff matter yesterday.

The Clerk.— Senator Torborg.
Senator Torborg.— Aye.

The Clerk.— Senator Velte.
Senator Velte.— Aye.

The Clerk.— Senator Wagner.
Senator Wagner.— Mr. President, I vote aye upon the grounds expressed by Judge Hiscock. I shall oppose the admission of any evidence calling for the mental intention of anybody's mind, but as to actual conversations at the time of giving the contribution, I think they are admissible.

The Clerk.— Senator Walters.
Senator Walters.— Aye.

The Clerk.— Senator Wende.
Senator Wende.— Aye.

The Clerk.— Judge Werner.
Judge Werner.— Mr. President, I have my serious doubts about the correctness of the ruling which has been made by the Chairman upon which there is apparently to be a sustaining vote, but because I am in doubt I shall vote to sustain the ruling.

The Clerk.— Senator Wheeler.
Senator Wheeler.— Aye.

The Clerk.— Senator White.
Senator White.— Aye.

The Clerk.— Senator Whitney.
Senator Whitney.— Aye.

The Clerk.— Senator Wilson.
Senator Wilson.— Aye.

Senator Blauvelt.— Mr. President, may I have my name called, please?

The Clerk.— Senator Blauvelt.

Senator Blauvelt.— I want to change my vote at this time from the negative to the affirmative. I am much in the same position that Judge Werner is. I have my doubts, but in view of the sustaining vote I desire to change on this proposition from the negative to the affirmative.

The Clerk.— Ayes 50, noes 2.

The President.— The stenographer will repeat the question.

The question repeated by the stenographer as follows: "What was the conversation between you and Mr. Potter? A. I had a conversation with Mr. Potter in the Manhattan Club. We were speaking generally about politics. They were quite warm at that time, and I told him that I did not believe Sulzer had a cent, words to that effect, and that I intended to give him a contribution, and that I thought it would be graceful on the part of his friends to contribute something to help him out; and Mr. Potter said he entirely agreed with me and that he would give his check; he went and drew his check —

By Judge Herrick:

Q. That is all I want of the conversation? A. That is all.

Q. Was there anything additional said about the necessity of his having money quickly and in cash to spend on his trips, and not ordinary campaign contributions?

Mr. Stanchfield.— Isn't that a pretty leading question?

Mr. Herrick.— Yes; it is cross-examination. A. I said to him that Mr. Sulzer was about to make a State campaign and that it would be necessarily expensive, and that I did not believe he had

anything, and that it would be a graceful thing if his friends would help him out. That is the substance of it.

Q. Many other of these contributions that you obtained were obtained at the Manhattan Club, were they not? A. They were all.

Q. All obtained at the Manhattan Club? A. Yes, sir.

Q. And at times several of them were together from whom you got these contributions? A. Yes.

Q. And did you talk to them? A. Yes.

Q. About his impecunious condition? A. I talked with several in the Club. It was a matter of common conversation.

Q. I mean as to his financial condition? A. As to his financial condition.

Q. And the necessity of doing something to help him out? A. Yes; I was anxious to get money; I believe he needed it.

Q. Now, when you took these contributions up to him can you recall all that you said? A. No, I cannot recollect all.

Q. Let me refresh your recollection. Did you not state to him when you took these several contributions up, I think it was the second visit, that here is something for you, do what you want with it? A. No, I do not recall that.

Q. Well, in substance? A. No, I do not recall that I said that. I only mentioned the use of the money on the first occasion. Then I said I had brought him something to help him out during the campaign, that was about the entire conversation.

Q. Didn't you suggest to him some clothing? A. If I did, I did it jokingly.

Q. You did, didn't you, you suggested that he buy him some clothing ? A. Yes, that it would do him no harm before he went up the State.

Q. Get a new hat? A. In substance that.

Q. In other words, he was to use this money that you brought to him for his personal purposes, clothing, hat, anything that he might want to spend it for? A. I said yesterday that I put no restriction upon it.

Q. Didn't you go a little further?

The President.— I think he should be confined to the conversation.

Mr. Herrick.— That is what I am asking him, at least I intended to. Will you repeat the question, Mr. Stenographer?

The stenographer repeated the question as follows: "In other words he was to use this money that you brought to him for his personal purposes, clothing, hat, anything that he might want to spend it for?" A. I stated that in substance.

Redirect examination by Mr. Stanchfield:

Q. Judge Conlon, you stated in answer to one of the inquiries from Judge Herrick that you did not believe that candidate Sulzer had a cent? A. That was — I don't mean literally a cent; I thought he was poor.

Q. Isn't that literally what you just said to Judge Herrick? A. Yes, that is what I said.

Q. You stated yesterday that your acquaintance with candidate Sulzer at that time had been intimate for a period of twenty years or more? A. Yes, sir.

Q. During that twenty years he had occupied one public office or another, hadn't he? A. Yes.

Q. He had been for something like eighteen years a member of the Federal Congress? A. Yes.

Mr. Herrick.— One moment. This is not proper redirect, it seems to me.

Mr. Stanchfield.— I submit it is.

The President.— Overruled.

Q. He had been a member of the Legislature of New York? A. Five times I think.

Q. He had been Speaker of the Assembly of New York? A. Yes, sir.

Q. And was a practicing lawyer? A. Well, he had a law office, I don't know how much practice he had.

Q. Haven't you read Sulzer's short speeches? A. In Congress or where?

Q. Anywhere and everywhere? A. I have read some and heard a great many.

Q. Haven't you read and heard him declare himself to be an eminent lawyer?

Mr. Marshall.— I object to that as improper —

The President.— Sustained.

Mr. Marshall.—And insulting —

The President.— Sustained.

Mr. Marshall.—And undignified in this presence.

The President.— The objection is sustained.

Mr. Stanchfield.— This is the last place in which one should lose one's temper.

The President.— Mr. Stanchfield —

Mr. Stanchfield.— If your Honor please, I did not provoke this discussion.

The President.— That is true. The Court has already reproved Mr. Marshall.

Mr. Marshall.— I wish to put myself correct on the record. I was making an objection to the statement made by counsel. My statement was being placed upon the record when your Honor made the ruling, but I thought I had your Honor's attention and the Court's attention to what I considered to be a manifest impropriety.

Mr. Stanchfield.— In the first place, Mr. Marshall was not in order; professionally speaking the objection lay with Judge Herrick.

The President.— One moment, gentlemen. We will get along better —

Mr. Stanchfield.— Your Honor will have no trouble with the Managers on that score.

Mr. Herrick.— He has had no trouble with the respondent's counsel.

The President.— Let this cease, and get back to work.

By Mr. Stanchfield:

Q. Judge Conlon, running back for a moment to your statement to Judge Herrick that you believed Governor or candidate Sulzer at the time did not have a cent, did you base that statement upon conversations you had had with Mr. Sulzer himself? A. No, sir.

Q. Did you ever talk with him upon the subject of his financial condition? A. I do not think I did.

Q. Did you know or do you know that during that fall he had deposited somewhere in the neighborhood of $40,000 or $50,000 in money in different banks in New York?

Mr. Herrick.— We object to that.

The President.— Objection sustained. I think the witness has already testified that he knew nothing about it.

The Witness.— No, nothing personal.

Q. On what did you predicate your statement to Judge Herrick that you did not believe he had a cent? A. Well, his appearance and the manner of living, habits, etc., I did not believe he had saved anything.

Q. Was his appearance in the fall of 1912 any different from what it had been in 25 years? A. No, I do not think it was.

Q. He dressed just as well in the fall of 1912 as he had in a quarter of a century? A. Just the same.

Q. He wore the same kind of a hat as candidate that he had for 20 years, the same style? A. Not the same hat he did wear (laughter).

The President.— Gentlemen, I submit to you, though you are fully members of the Court with myself, that is hardly proper to indulge in mirth here.

Q. I meant the same general style of a hat? A. Well, I think so.

Mr. Stanchfield.— I think that is all, Judge.

By Senator Duhamel:

Q. One moment, I would like to ask the witness a couple of questions: During your visit to the Governor one morning when

you took him some contributions you say Mrs. Sulzer was present? A. Yes, sir.

Q. Did she show any interest in these contributions? A. She thanked me for bringing them there and engaged in the conversation; we were together, the three of us, his wife, himself and myself.

Q. What did the Governor do with the contributions? A. I don't think he did anything while I was in the room. I left them on the dining table. He was then preparing for his breakfast, sitting down at the table, and I don't think he did anything with them while I was there.

Q. Did Mrs. Sulzer show any intention of taking charge of the contributions? A. No, sir.

Mr. Kresel.— Mr. Brady.

The Clerk.— You do solemnly swear that the evidence which you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer, as Governor of this State, shall be the truth, the whole truth and nothing but the truth, so help you God?

Mr. Brady.— I do.

The Clerk.— What is your full name?

Mr. Brady.— Daniel M. Brady.

DANIEL M. BRADY, a witness called on behalf of the Managers, having been first duly sworn in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Stanchfield:

Q. Mr. Brady, you reside in New York? A. I do.

Q. What is your occupation? A. I am president of the Brady Brass Company.

A Member of the Court.— Speak louder.

Mr. Stanchfield.— He says he is the president of the Brady Brass Company.

Q. In the fall of 1912, did you make a contribution to candidate Sulzer, after his nomination for Governor? A. I did.

Q. For how much? A. $100.

Q. Do you recollect whether you handed a check to candidate Sulzer, or to someone else to deliver to him? A. I gave the check to Judge Conlon.

Q. You didn't see candidate Sulzer in person? A. I did, I spent the entire evening, almost, with Governor Sulzer.

Q. Well, was that the same evening when you gave the check to Mr. Conlon? A. It was.

Q. But instead of handing it to candidate Sulzer, you handed it to Judge Conlon? A. I did.

Q. Now, did you have any talk with candidate Sulzer that evening, about contributing to his campaign, or to help him in any way? A. I never had a word in my life, either that evening or any other evening.

Q. Where is the check, Mr. Brady? A. I destroyed the check.

Q. Have you got your check book here, stub book? A. I destroyed the stub, too.

Q. So that you have neither one of them here? A. Neither one.

Mr. Stanchfield.— That is all.

Cross-examination by Mr. Herrick:

Q. Prior to your giving the check, had there been some conversation between you and Mr. Conlon and some others there, as to the financial condition of Mr. Sulzer? A. I probably talked with fifteen or twenty of the members, fellow members, of the Manhattan Club.

Q. And was the subject of his financial condition discussed by you?

Mr. Brackett.— If the Court please, this calls for a conversation, not with Judge Conlon, apparently, who was the messenger that carried it, but with some third parties entirely. Therefore, we object to it as hearsay and incompetent.

The President.— It must be limited to when Judge Conlon was present and took part in it.

Mr. Herrick.— Very well. I will so limit it.

The President.— Proceed.

Q. Was there a conversation in which either Judge Conlon took part, or when he was present, in relation to Mr. Sulzer's financial condition? A. Almost all of the conversations were had around the dinner table, and invariably Judge Conlon was present.

Q. That is Judge Conlon's table, isn't it? A. Popularly known in the Manhattan Club as Judge Conlon's table.

Q. Was the subject of Mr. Sulzer's financial condition discussed or talked of? A. It was referred to casually.

Q. Yes. A. That was not necessary to inform me as to what I thought regarding his —

Q. (Interrupting) You had your own opinion as to his financial condition. A. I had my own opinion as to his financial condition. I had known him many, many years.

Q. Let me ask, to get it. You have heard Judge Conlon testify as to his opinion, as to his financial condition just now? A. I did.

Q. If there is no objection I will ask it to get it there. Did your opinion coincide with him in that respect? A. I always regarded Governor Sulzer as neither a speculator or moneymaker, or anything but a poor man.

Q. And now, was it the subject of discussion in the presence of Judge Conlon, or by Judge Conlon the propriety of your — some of you contributing to help him out because of his financial condition? A. Judge Conlon never directly or indirectly suggested a contribution or suggested anything else.

Q. Well, but — A. (Interrupting) The gentlemen gave freely and of their own accord, and that — so far as my information goes, quietly and without any display.

Q. After talking over his condition? A. After these various conversations.

Q. Yes, and the necessity of doing something to help him because of his financial condition? A. Yes.

Mr. Herrick.— That is all.

Redirect examination by Mr. Stanchfield:

Q. Mr. Brady, did you get your information or belief, or form

your belief, as to Mr. Sulzer's financial condition from talks you had with Mr. Sulzer himself? A. I did.

Q. When did you talk, in the fall of 1912, with Mr. Sulzer, as to his financial condition? A. I had no conversation with him in 1912, regarding his financial condition.

Q. When had you had a talk with him on that subject? A. Probably a year or two ago.

Q. Well, that would be perhaps, then, a year before he became a candidate for Governor? A. Probably, yes, sir.

Q. You mean to say, then, that you had a talk with him on the subject of his financial condition? A. I did.

Q. What did he tell you with regard to it? A. We were discussing the —

Q. (Interrupting) Just what did he tell you with regard to his financial condition? A. He told me that he was still in Congress, fighting for the people, and a poor man, and I believed it.

Q. Is that the substance of the conversation? A. That was the substance of it.

Senator McClelland.— Did you receive any acknowledgment?

The President.— Senator McClelland.

By Senator McClelland:

Q. Did you receive any acknowledgment of this contribution from Governor Sulzer? A. None.

Q. Did you receive an acknowledgment from anybody? A. None.

Mr. Stanchfield.— That is all, Mr. Brady.

Mr. Herrick.— That is all.

Senator Blauvelt.— Mr. President.

Senator Bussey.— Mr. President.

The President.— Senator Bussey.

Senator Bussey.— I would like to ask the gentleman why he destroyed the check and the stub. That seems to me to be a very unusual proceeding. And when he did it.

The Witness.— I am delighted that the Senator put that question to me. I am not a politician, never was. I am a business man. It was a controversy between two factions. I am friendly to both sides. I didn't care to be mixed up in it, and I thought that was a pretty quick way of getting out of it.

The President.— Is there anything else of this witness?

Senator Bussey.— How would the destruction of that check let you out?

The Witness.— That was a mistaken impression on my mind, because I have lost a great deal of time in New York and Albany from my business in connection with the case.

By Mr. Stanchfield:

Q. Well, Mr. Brady, just for the record, when did you destroy that check and your stub? A. A matter of three or four weeks ago.

Q. After you had read in the papers about the Frawley Investigation? A. It was some time after the —

Q. (Interrupting). After you had read in the papers about the Frawley Investigation? A. No, after I had read in the papers that Governor Sulzer had been impeached.

Q. You, although a business man, I take it, knew that that check and that stub might be a subject of judicial investigation, didn't you? A. It was fair to assume that it would be.

Q. Well, when you destroyed it, didn't you think you were getting rid of the evidence, in your own mind? A. Well, I don't know whether I thought so or not; it was a fact.

Q. Did you try to? A. Sir?

Q. A fact that you tried to get rid of it as evidence? A. Not with any intention of concealing anything, sir.

Q. No, but to prevent its coming to the light? A. I didn't look at it from that point of view, sir.

Q. Well, what did you destroy it for, after you knew that it might be called for as evidence? A. Because I didn't want my check or my affairs paraded all over the country, and photographed from Maine to California.

Mr. Stanchfield.— That is all.

By Mr. Herrick:

Q. Let me ask you one question, Mr. Brady. Do you recall the indorsement on this check when it came back?

The President.— Did you hear the counsel's question?

Mr. Marshall.— Have the stenographer read it.

Q. Do you recall the indorsement upon the back of the check when it came back to you? A. It was drawn to the order of William Sulzer, and I am quite sure it was indorsed William Sulzer.

Q. Not Sarecky, by Sarecky? A. I am not clear as to that, it might have been.

Mr. Herrick— It is conceded, is it not, that this is in the Mutual Alliance Trust Company account of Sarecky?

Mr. Stanchfield.— Well, but it was indorsed by Governor Sulzer. Perhaps it was not proper, but he has already testified to it.

Mr. Herrick.— That is his impression now. I asked him if it was not by Sarecky.

Mr. Stanchfield.— Oh, you mean whether the name Sulzer was written by Sarecky?

The President.— It might have been Sarecky?

Mr. Herrick.— Or by Sarecky, as I understood him.

Mr. Marshall.— It is included in Managers' Exhibit 27, at page 702.

Mr. Herrick.— That is all.

Mr. Stanchfield.— That is all.

Senator Patten.— Mr. President.

The President.— Senator Patten.

By Senator Patten:

Q. At the time of the destruction of the check and the stub book, did you perform that act of your own volition, or was it suggested to you by anyone? A. Suggested by no one, sir.

The President.— Is there anything further?

By Mr. Stanchfield:

Q. You were examined, Mr. Brady, on the 12th of this current month, were you not, before the Managers? A. Yes.

Q. At 37 Wall street? A. Yes.

Q. Let me read you this testimony and see if you recollect it?

Mr. Herrick.— That is objected to.

The President.— Objection sustained. You may show it to him only to refresh his recollection.

Mr. Stanchfield.— I know. If your Honor please, I am reading it for the purpose of contradiction with reference to new matter brought out by them. I am not limited to what he says about it.

The President.— No, but I don't think you can impeach him.

Mr. Stanchfield.— I am not trying to impeach him. I am trying to —

The President.— But you cannot put this question, Mr. Stanchfield.

Mr. Stanchfield.—Will your Honor hear me for a moment?

The President.— Certainly.

Mr. Stanchfield.— Judge Herrick asked the witness upon the stand with reference to whether or no this check was indorsed by William Sulzer; then he asked him whether it was not indorsed by Louis A. Sarecky, or whether the indorsement by William Sulzer upon the back of the check was not made by Louis A. Sarecky. That is brought out, new matter, by counsel on the other side, and is a subject with reference to which they make him their witness. Therefore, upon redirect, have I not the right, confessedly, the right to show that upon another occasion, under oath,

the witness stated that that check bore the indorsement of William Sulzer, and no other?

The President.— I think not, as I understand the rule, unless it has been changed, you having put the witness on the stand cannot impeach him. The statements that he made outside of Court are only — are not evidence; they are simply impeachment of the witness, and therefore I think they are inadmissible. Of course, you are not bound by his testimony; you can cross-examine him; you can call his attention, or ask him if he did not say something on some other occasion, or testified, and ask whether that refreshes his recollection, whether the — what is his recollection now on the subject.

Mr. Stanchfield.— If your Honor please, that is just what I was proposing to do. I was reading to him what the witness testified to upon another occasion, before another tribunal, with reference to the same facts.

The President.— The objection to your question was, it put it in evidence — it assumed that he had so testified on another occasion, and that fact you cannot put in, in my judgment. You can ask him if he did not so testify, and then being called to his attention, ask him if that does not refresh his recollection.

Q. Mr. Brady, were you asked before the Board of Managers this question: "Q. Did you see Judge Conlon hand a check to Governor Sulzer?" And did you answer, "I did not." A. That is correct.

Q. Speak so they can all hear you, please. Were you asked this question: "Q. Did you know it ever got to him?" And did you answer: "Yes, sir." A. I did.

Q. Were you asked: "Q. How did you know that?" And did you make this answer: "It bore the endorsement of William Sulzer when it came back?" A. That is correct.

Mr. Stanchfield.— That is all, Mr. Brady.

Mr. Herrick.— Mr. President of the Court, my question was for the simple purpose of ascertaining whether this was the same check as set forth on page 702 of the record, Daniel M. Brady, being Sarecky's account. That is the only purpose.

By Mr. Herrick:

Q. Now, to clear it up, did you give more than one check? A. Only one.

Q. Did you give out a check to Mr. Sarecky? A. I did not.

Mr. Herrick.— That is all.

Mr. Stanchfield.— That is all.

Mr. Stanchfield.— Will the counsel for the respondent inform us this morning whether or no Mr. Colwell has been heard from or is in the jurisdiction?

Mr. Herrick.— I asked Mr. Hinman to take charge of that matter and he says he hopes to hear by to-night, Mr. Stanchfield.

The Clerk.— Mr. Dooling, you do solemnly swear that the evidence which you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer as Governor of the State of New York, shall be the truth, the whole truth and nothing but the truth, so help you God?

The Witness.— I do.

JOHN T. DOOLING, a witness called in behalf of the Managers, having been first duly sworn, in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Stanchfield:

Q. What is your full name? A. John T. Dooling.

Q. Where do you reside; will you kindly speak so that all the members of the Court can hear you; it is quite difficult for them to hear you unless you speak very loud A. New York city.

Q. You will have to speak louder than that? A. New York city.

Q. What is your profession? A. I am a lawyer.

Q. Do you know the respondent, Governor Sulzer? A. I do.

Q. And for how many years have you known him, Mr. Dooling? A. I should say over twenty years.

Q. And have your relations with him over that period of twenty years always been cordial and intimate? A. They have been cordial and friendly.

Q. And did your friendly relations continue down to and including this candidacy for the Governorship in the fall of 1912? A. They did.

Q. Did you see candidate Sulzer on or about the 15th of October, 1912? A. I did.

Q. Do you recollect where your interview with him took place? A. I saw him at his office in Broadway. I think it is 111 or 115.

Q. Did you have a chat with him or talk with him on the subject of the campaign? A. I had a very brief talk with him in his private office.

Q. Will you tell us, Mr. Dooling, what the conversation was? A. As I recall it I entered his room and I was with him for perhaps two minutes.

The President.— Speak a little louder, if you please.

The Witness.— I entered his private office and he was standing and I remained standing. I told him that I understood that he needed help. I handed him the check which I now have in my hand and I told him, or I stated that I hoped that would help him. He shook hands with me and he thanked me and I left.

Q. At that time he had been nominated and was the candidate for the Democratic party for Governor? A. Yes, sir.

Q. Is that the check which you hold in your hand, which you handed him at that time? A. It is.

Mr. Stanchfield.— I offer that in evidence.

Mr. Herrick.— No objection.

The check offered in evidence was received in evidence and marked Exhibit M-61.

Mr. Stanchfield. On the end of the check (reading):

"John T. Dooling. Check No. 3727.
"New York, *October* 15, 1912.
"THE GUARANTEE & TRUST COMPANY."

What is the Broadway number?

The Witness.— 176 Broadway.

Mr. Stanchfield.—(Reading) "176 Broadway.

"Pay to the order of J. T. Dooling one thousand ($1,000) dollars.

"JOHN T. DOOLING."

(Indorsed) "J. T. Dooling" with the rubber stamp indorsement of Boyer, Griswold & Company upon it. It is likewise certified and payable through the New York Clearing House October 16th.

Q. This check — I see the certification mark, Mr. Dooling, is October 16th? It was not certified I take it, or is that the fact, that it was not certified when you handed it to candidate Sulzer? A. It was not certified when I handed it to him.

Mr. Stanchfield.— That is all.

Cross-examination by Mr. Herrick:

Q. Mr. Dooling, do you know Hugh J. Reilly? A. I do.

Q. Prior to this visit to Mr. Sulzer when you gave him this check had you had a conversation with Mr. Reilly? A. I think that I had more than one conversation with him and his counsel.

Q. Did you have any conversation with him in which he told you about Mr. Sulzer's financial condition?

Mr. Stanchfield.— I object to that.

Mr. Herrick.— I am not asking, may it please the Court —

The President.— Who was Reilly? I have forgotten now.

Mr. Herrick.— It is not in proof yet.

Mr. Stanchfield.— It is a long story, if the Presiding Judge please.

The President.— Anything in the evidence?

Mr. Stanchfield.— No.

The President.— I don't remember any.

Mr. Herrick.— I am not asking for the conversation, simply what it was about.

Mr. Stanchfield.— Now I object.

The President.— That is to some extent calling for the conversation.

Mr. Herrick.— It is not for what was said. I am asking if they had a conversation about his financial condition; not what was said.

The President.— That calls to some extent as to the conversation.

Mr. Herrick.— Pardon me, it seems to me — It seems to my recollection of the trial of cases, that you can ask if they had a conversation.

The President.— On the subject?

Mr. Herrick.— On the subject, but not go into what the conversation was.

Mr. Stanchfield.— I object to that upon the ground that it is hearsay and it does call for the substance of that conversation.

The President.— Just yes or no to that.

The Witness.— I had a conversation —

Q. Yes or no, the Judge says. A. Well, I don't think I can answer that question truthfully yes or no. I had it either with Reilly or with his counsel, possibly with both. I am not sure whether it was one or the other.

The President.— That is yes or no to the material point.

Q. And was your giving this money to Mr. Sulzer partially the result of that conversation?

Mr. Stanchfield.— I object to that as inconsequential and incompetent.

The President.— Objection sustained.

Q. How soon after you had this conversation relative to his financial condition did you give this check to Mr. Sulzer? A. Oh, it was within a couple of weeks.

Q. A couple of weeks? A. Yes.

Mr. Herrick.— That is all.

The President.— That is all, Mr. Dooling.

Witness excused.

The President.— Counselor, to whose order was that check written?

Mr. Stanchfield.— It was to the order of John T. Dooling, the witness.

The President.— And then indorsed by him?

Mr. Stanchfield.— Yes, and then certified the next day.

The President.— Yes.

Mr. Kresel.— Mr. Boyer.

The Clerk.— You do solemnly swear that the evidence which you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer as Governor of this State shall be the truth, the whole truth and nothing but the truth, so help you God?

The Witness.— I do.

The Clerk.— What is your full name?

The Witness.— Philip Boyer.

PHILIP BOYER, a witness called on behalf of the Managers, having been first duly sworn, in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Kresel:

Q. Mr. Boyer, what is your business? A. Banker.
Q. And stock broker? A. Yes.

The President.— Speak up as loudly as you can, witness, because it is difficult for us all to hear.

The Witness.— Yes.

Q. What firm are you a member of now? A. William C. Langley & Company.

Q. They are in New York city? A. 10 Wall street.

Q. Were you ever a member of the firm of Boyer, Griswold & Company? A. Yes.

Q. What was the business of that firm? A. Banking and brokerage.

Q. Where was their office in the month of October, 1912? A. 42 Broadway.

Q. In the city of New York? A. Yes.

Q. Is the firm of Boyer, Griswold & Company now dissolved? A. Yes, it dissolved in March.

Q. Of this year? A. 1913.

Q. Do you know a man named Frederick A. Colwell? A. Yes.

Q. How long have you known Mr. Colwell? A. Well, he has been a business acquaintance of upwards of two years.

Q. Did you see Mr. Colwell on or about the 16th of October, 1912? A. Yes.

Q. Where? A. In my office.

Q. That is in the office of the firm of Boyer, Griswold & Company? A. Yes.

Q. You had some conversation with Mr. Colwell at that time, did you? A. Well, a business conversation?

Q. Yes, state what conversation you had with him? A. Well, as I remember it, Mr. Colwell told me he was going out of town that afternoon and wished to buy 200 shares of Big Four to take with him. He asked me if we could buy it on the Stock Exchange for cash. You understand, Mr. Kresel, the regular deliveries go through the day after the purchases are made.

Q. Yes. I will make that plain in a little while. Just continue your conversation. A. And I said yes, we would. We bought 200 shares.

Q. Was that all of the conversation? A. Well, excepting —

Q. As far as you recall it? A. Except in reference to the cash transaction.

Q. Will you speak a little louder? A. Yes.

Q. Go on and finish that. A. Mr. Colwell asked me if I would

buy him 200 shares of Big Four for cash, delivery to be made the same day the purchase was made: I said yes, and gave the order to have the purchase made.

Q. What is the proper name of the stock which you call Big Four? A. Cleveland, Chicago, Cincinnati & St. Louis.

Q. Railroad stock? A. Railroad stock.

Q. Now, you were speaking about this being a cash transaction. Now, is this what you mean by it, that the ordinary purchase of stock on the Stock Exchange is for delivery on the following day? A. Yes.

Q. But this particular transaction with Mr. Colwell was for delivery on the same day? A. Exactly.

Q. That is, he gave you the order to purchase on the 16th of October, 1912, and he asked you to have the stock delivered to him on that very day? A. Yes.

Q. And that is what you denominate a cash transaction? A. Yes.

Q. Did your firm purchase this stock? A. Yes.

Q. Did Mr. Colwell pay for it? A. Yes.

Q. And how did Mr. Colwell pay for this stock, in what way? A. He paid for it with checks and cash.

The President.— How much did the price amount to?

The Witness.—At 60 it was $12,000.

Q. That is, the price was $60 a share? A. $60 a share.

Q. There were 200 shares? A. Yes, sir.

Q. Do you now recall the names of the persons whose checks were given by Mr. Colwell in part payment of this stock? A. No, but I have got the record here.

Q. You have the record? A. Yes.

Q. Now, will you get the record and tell us please? A. Yes, Mr. Reyonlds has it.

Mr. Kresel.— Mr. Reynolds, let me have the book, will you?

Q. Now, will you state whose checks were given by Mr. Colwell to your firm in part payment of this stock? A. This is the first time that I have seen this entry. I will do my best. Could Mr. Reynolds be here with me?

Q. Did Mr. Reynolds make that entry? A. Yes.

Mr. Marshall.—We have no objection.

By the President:

Q. Were not those checks indorsed by this firm?

Mr. Kresel.— They were.

The President.— Doesn't that identify them?

Mr. Kresel.—Yes, sir.

The President.— Suppose you show him those checks.

Mr. Kresel.— There are some I cannot show him.

The Witness.— I guess I can give it. Do you want me to give the amounts?

By Mr. Kresel:

Q. Yes, give the amounts and the name? A. William Sulzer, $900.

Mr. Kresel.— Will you produce that check: I gave you notice to produce it.

Mr. Marshall.— We have not got it.

Q. Do you know on what bank it was drawn? A. No.

Q. Go on. A. Theodore W. Alpers, $1,000.

Q. I call your attention to Exhibit 60, this check for $1,000 made by Theodore W. Meyers, and call your attention to the endorsement thereon of Boyer, Griswold & Company, and that it was deposited to the credit of Boyer, Griswold & Company in the Manhattan Company on October 16, 1912, and ask you whether that was the check which you have inserted there as Theodore W. Alpers? A. It must have been.

Q. What is the next check? A. John Lynn, $500.

Q. Now, I show you Exhibit 56 and call your attention to the endorsement of Boyer, Griswold & Company and ask you whether that is the check ? A. Yes, that is it.

Q. What is the next check? A. Lyman A. Spaulding, $100.

Q. I show you Exhibit 55; is that the check of Lyman A. Spaulding which was given to you? A. Well, it must be.

Q. Is the endorsement of your firm on it? A. The endorsement of our firm is on it.

Q. Very well. Then it is that check? A. To the best of my knowledge it may have been cashed in the office another day though.

Q. The next? A. The next is Edward F. O'Dwyer or Dwyer.

Q. Edward F. Dwyer? A. Dwyer.

Q. How much? A. $100.

Q. Go on. A. John W. Cox, $300; Frank V. Straus Company, $1,000.

Q. Now, I show you Exhibit 51; is that the check which was given to you, the Straus check? A. Yes.

Q. It bears the endorsement of your firm? A. Yes; John T. Dooling, $1,000.

Q. I show you Exhibit 61; is that the Dooling check which was given to your firm? A. Yes, that is it.

Q. Are those all the checks? A. Yes, sir.

Q. What was the total amount of the checks which were delivered by Colwell? A. $4,900.

Q. $4,900? A. Yes, sir.

Q. Now, the price of the stock was $12,000, wasn't it? A. $12,000, yes.

Q. And your commission was how much? A. $25.

Q. So that altogether you were to get from Colwell, $12,025? A. Yes.

Q. You received $4,900 in checks, is that correct? A. Right.

Q. And the balance was paid in what form? A. In cash.

Q. In currency? A. Yes.

Q. Bills? A. I imagine so, yes.

Q. Currency anyway? A. Yes.

Q. All right. How much in currency did you get? A. $7,125. There is an item here of currency for that. Mr. Reynolds will tell you whether that is the currency.

Q. $7,125 in currency? A. Yes.

Q. Were those checks and the $7,125 in cash delivered by Colwell to your firm on the 16th of October, 1912? A. Yes.

Q. And was the stock delivered to him? A. Yes.

Q. By your firm? A. Yes.

Q. On that very day? A. Yes.

Q. Now, have you your ledger here ? A. Well, it is a loose leaf ledger. I have sheets from it.

Q. Very well. Let me see the sheet which contains the entry of this transaction.

The President.— Are you going to take issue on the transaction?

Mr. Marshall.— I do not think there will be any serious dispute about the transaction, your Honor.

Mr. Kresel.— I just want to put in a copy. I have a copy all prepared.

The Witness.— I think you have a copy of it.

Mr. Kresel.— Yes, I have. I just want to see the original to show it to the other side to show them that it is a correct copy.

The Witness.— Here it is (handing same to Mr. Todd).

Mr. Marshall.— Let us look at it just a second (examines it).

Q. Now, please look at this paper which I hand you and state whether that is a correct transcript of this transaction as it appears in your ledger?

Mr. Marshall.— You mean of that one account?

Mr. Kresel.— Yes.

A. Yes.

Mr. Kresel.— I offer that in evidence.

Admitted and marked **Exhibit M-62.**

Mr. Kresel.— The ledger entry is under the heading of F. L. Colwell, and on the debit side is the following entry: "October 16th, 1912, 200 C. C. C. & St. Louis at 60, $12,025." On the credit side: "October 16, 1912, 200 C. C. C. & St. Louis; D"—

Q. Does the "D" stand for delivered? A. Yes, sir.

Mr. Kresel.— And then again "$12,025."

Q. Mr. Boyer, will your records show from whom this stock was bought by your firm? A. Yes, it will.

Q. Will you tell us from whom it was bought? A. Bought from the firm of Jewett Brothers.

Q. Does your record also show the numbers of the certificates? A. Yes.

Q. Will you please give us those? A. I cannot make out the first whether it is a 9 or a G.

Q. Whose handwriting is that? A. Mr. Reynolds.

Mr. Kresel.— Very well, then I will get it from him. That is all.

The President.— Any cross-examination?

Mr. Hinman.— Yes, sir.

Cross-examination by Mr. Hinman:

Q. Were these certificates of Big Four stock delivered that day, October 16th, to Mr. Colwell? A. Yes.

Q. Did you make the delivery? A. No.

Q. You do know that it was made? A. Yes, sir.

Q. Did you receive from Mr. Colwell the checks and the currency to which you have referred? A. No.

Q. Personally I mean? A. No.

Q. Did you personally see these checks or that currency? A. No.

Q. You had nothing to do with the endorsement of those checks and the handling of the deposit of the currency, as I understand? A. Absolutely none. That is done with a rubber stamp in the mechanical part of the office.

Q. Do you know what employee in your bank did receive those checks, who endorsed them and deposited them? A. Yes.

Q. Who was it? A. Mr. Reynolds.

Q. What person in your bank attended to the certification or obtaining the certification of these checks that had been delivered by Mr. Colwell to your bank? A. As I remember it they were handed in all certified.

Q. Is that your recollection? A. I never saw them. Mr. Reynolds can tell you that.

Q. You did not see them? A. I did not see them.

Q. That is what I am getting at; so you do not know about that personally. A. No, sir.

Q. So in any event you did not attend to that? A. No, sir.

Re-direct examination by Mr. Kresel:

Q. Mr. Boyer, did Mr. Colwell say anything to you as to the person for whom he was purchasing this stock?

Mr. Hinman.— I object to that on the ground the witness has already testified he did not have anything to do with the transaction except in the beginning.

The President.— I suppose that may be the very thing as far as that part of his answer is concerned.

Mr. Hinman.— I withdraw the objection.

A. I testified before Mr. Colwell said he was buying the stock for his own account because he was going out of town.

Q. Otherwise he made no statement to you? A. None.

Mr. Kresel.— That is all.

By the President:

Q. That was to you? A. Yes, sir.

The President.— That is what I understood the witness; the original direction was given to him.

Mr. Kresel.— Now, Mr. Reynolds.

The Clerk.— Mr. Reynolds, you do solemnly swear that the evidence which you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer, as Governor of this State, shall be the truth, the whole truth, and nothing but the truth, so help you God?

The Witness.— I do.

CHARLES A. REYNOLDS, a witness called in behalf of the Managers, having been first duly sworn, in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Kresel:

Q. Mr. Reynolds, were you prior to the 1st of April, 1913, in the employ of Boyer, Griswold & Company? A. I was.

Q. And were you their cashier? A. I was.

Q. Did you have charge of making entries in their check book? A. Yes.

Q. Will you turn to these entries that Mr. Boyer was reading from under date of October 16, 1912? A. Yes, sir.

Q. Do you find there a certain list of checks? A. I do.

Q. Were those entries made by you? A. They were.

Q. In the regular course of your business? A. Yes, sir.

Q. Now, there is an entry there of the receipt of a check of William Sulzer for $900; was that check drawn to the order of Boyer, Griswold & Company? A. I do not remember, and there is no record here showing to what order it was drawn.

Q. What is your best recollection as to whose order that check was drawn to? A. I really could not say.

Q. You cannot tell? A. No, sir.

Q. Have you any recollection on that subject at all? A. Nothing at all definite.

Q. What is your best recollection about it? A. I really have none whatever, Mr. Kresel.

Mr. Kresel.— I wish the gentlemen would produce the check.

Mr. Hinman.—We have not got it, Mr. Kresel.

By the President:

Q. You saw the checks, did you? A. Yes.

Q. And you attended to making up the deposit? A. Yes.

Q. But you do know it was William Sulzer's check? A. I do.

Q. Purporting to be signed William Sulzer? A. The check was signed by William Sulzer.

Q. And certified? A. And was certified so it was evidently a correct signature.

The President.— It was afterward paid?

Q. It never came back, did it? A. It never came back.

By Mr. Kresel:

Q. Did you have all the checks certified that were given by Colwell in this transaction? A. They were already certified.

Q. When he delivered them to you they were certified? A. He did not deliver them into my hands but they came through the regular course of the office, and they were certified when they came to the cage.

Q. Do you remember whether this check of $900 of William Sulzer was drawn on the Farmers' Loan & Trust Company? A. To the best of my recollection it was, but I am not sure.

Q. That is your best recollection? A. Yes, sir.

Q. And where were all the checks which Colwell gave in this transaction deposited? A. In the Manhattan Company.

Q. And that is where Boyer, Griswold & Company have their account? A. That is right.

Q. Now, Mr. Reynolds, who handed you the checks and the currency? A. Mr. Murray.

Q. Al Murray? A. Yes.

Q. An employee of Boyer, Griswold & Company? A. Yes.

Q. Do you recall in what form the currency was? A. It was all in bills.

Q. Of large denomination? A. It varied; some large, some small.

Q. Were there any thousand dollar bills among them? A. I don't recall whether there were any thousand dollar bills or not.

Q. And did you make a deposit of that currency to the credit of the firm of Boyer, Griswold & Company? A. I did.

Q. Did you personally deliver the stock to Mr. Colwell? A. I did not.

Q. Do you know who did? A. Mr. Murray.

Q. Mr. Murray? A. Yes, sir.

Q. Did Mr. Colwell give a receipt for that stock? A. He did not.

Mr. Kresel.— That is all.

The President.—Any cross?

Mr. Hinman.—Just a word.

Cross-examination by Mr. Hinman:

Q. Reference has been made to entries in these checks and of the currency on this book which you have been referring to and which the previous witness referred to. In what book are those entries? What do you call the book? A. It is on the stubs of the check book, on the back of the stubs.

Q. When were those entries made in reference to this transaction on the stub of the check book? A. On October 16th, immediately after the money was paid into the office.

Q. Did those checks and that currency come to you in order that you might make a deposit thereof? A. Yes.

Q. Did you make those entries on the stub of this check book as they now appear just before you made the deposit, and did you make them in connection with the making of the deposit? A. Yes.

Q. Do you know for how long a time those checks and that currency had been there in your office before they came to you? A. You mean in the possession of an employee of our office?

Q. Yes. A. The few moments of time to take them from one room to another.

Q. Did you see them delivered to the other employee? A. No, sir.

Q. Let me ask you again. Is it not the fact that you have no personal knowledge as to the time when those checks and that currency came into your firm's office? A. No personal knowledge, no.

Q. Did you observe the indorsements upon those checks as you entered them upon the stub of this check book? A. Yes.

Q. And as you handled those checks did you observe the face of the checks so that you knew by whom they had been drawn? A. Yes, more with the idea of seeing whether it was a perfectly good check than anything else.

Q. You say that some of these bills and the currency were large and some small; what do you mean when you refer to a small bill? A. Ones, twos, fives, tens perhaps.

Q. Were there any one and two dollar bills in that currency? A. I could not say.

Q. Were there any $5 bills in that currency? A. I could not say as to any special denomination.

Q. Was it a large package of bills or small package when it was received by you? A. If piled up probably three-quarters of an inch high.

Q. Three-quarters of an inch high? A. A good sized package of bills.

Q. Was the package of bills when handed to you enclosed in a wrapper of any kind? A. Not that I remember.

Q. Do you know whether the bills when they came to you for deposit were in the same form and the same bills that had been received by your concern from Colwell? A. I could not say.

Q. You know nothing about that? A. No, sir.

Mr. Hinman.— That is all.

Mr. Kresel.— That is all. Mr. Murray.

The Clerk.— Mr. Murray, you do solemnly swear that the evidence which you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer, as Governor of this State, shall be the truth, the whole truth and nothing but the truth, so help you God?

The Witness.— I do.

ALEXANDER MURRAY, a witness called in behalf of the Managers, having been first duly sworn, in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Kresel:

Q. Mr. Murray, during the month of October, 1912, were you in the employ of Boyer, Griswold & Company? A. Yes.

Q. And what was your position there? A. Well, charge of the margins and the order department.

The President.— Speak louder. The Court cannot hear you.

The Witness.— I was margin clerk and had charge of the order department.

Q. Now, on the 16th of October, 1912, do you remember transmitting to your representative on the Exchange an order to purchase 200 shares of Big Four? A. Yes.

Q. Was the stock purchased? A. Yes, sir.

Q. And did you get it from some broker from whom it was purchased? A. No, sir, I did not get it.

Q. Was it handed to you that day? A. Yes.

Q. By whom? A. Mr. Reynolds, the cashier.

Q. Did you deliver that stock to Frederick L. Colwell on that very day ? A. I did.

Q. And where did you make the delivery? A. In the private office of Mr. Boyer.

Q. In the office of Boyer, Griswold & Company? A. Yes, in Mr. Boyer's private office.

Q. What did Mr. Colwell give you when you handed him the stock? A. He handed me certain currency and checks in payment thereof.

Q. Certain currency and checks ? A. Yes.

Q. What did you do with the checks and the currency? A. I immediately handed them to the cashier, Mr. Reynolds.

Q. Now, I want to show you Exhibits 61, 55, 51, 56 and 58, and ask you whether those checks were among the checks that you got from Mr. Colwell? A. I cannot say. I do not remember anything about the checks other than just seeing they were certified. I could not identify any one of them.

Q. But whatever you got — A. Whatever I got I handed to Mr. Reynolds.

By the President:

Q. It is certain whatever checks you gave him were certified before they were given to you? A. Yes, sir.

By Mr. Kresel:

Q. How long a time expired between the time that Mr. Colwell handed you the checks and money and the time you gave them to Mr. Reynolds? A. I simply received them from Mr. Colwell in one room and walked right out to the cashier as quickly as I possibly could.

Cross-examination by Mr. Hinman:

Q. Was there any occasion for doing that just as quick as you could, that is, turning it over to the deposit clerk? A. The only occasion being that I had to watch a telephone for the Stock Exchange and I ran into the room and got the money and ran back as quick as I could to answer that telephone.

Q. You went on the run both ways? A. No; I walked into the room and stopped a minute to receive the money from Mr. Colwell, handed him the stock and then got back as quickly as I possibly could.

Q. Who gave you the instructions to order the stock? A. I believe it was Mr. Boyer.

Q. What time in the day was it that he gave you that order? A. In the afternoon.

Q. What time in the afternoon? A. I don't remember the exact time.

Q. How long after the order was given by you to buy the stock was it before the stock was received at your office? A. I should say about half an hour.

Q. How soon after the stock was received at your office did you turn these checks and this currency over to the clerk, the deposit clerk? A. Possibly ten minutes.

Q. Were you present when Mr. Colwell had his talk with your Mr. Boyer? A. No, sir.

Q. Did you see Mr. Colwell in the office at any time that day? A. Yes, sir.

Q. When did you first see him? A. I was asked for a quotation on the stock and went into the room to give it to him. That was the first time I saw him.

Q. When were you asked for that, what time in the day? A. In the afternoon some time.

Q. How long was that before you gave the order for the stock?

The President.— Are you going to take issue on the purchase of this stock?

Mr. Hinman.— No, but there are some details that may become important. There will be no issue on the purchase of the stock, not the slightest.

Q. Do you know whether Mr. Colwell remained there all the time? A. No, sir, I do not.

Q. Did Mr. Colwell deliver the checks and the currency to you in person or did he deliver that to someone else first? A. As I said before he delivered it directly to me and nobody else.

Q. Did you know him? A. Subsequently, yes, but not that day.

Q. Had you ever seen him or known him before that? A. No, sir.

Q. When the stock came there to your office, these 200 shares of Big Four, was the stock delivered to you? A. By Mr. Reynolds?

Q. To you? A. To me.

Q. What instructions if any did Mr. Reynolds give you then? A. None.

Q. None whatever? A. No, sir.

Q. Who gave you any instructions in connection with the stock in respect to obtaining the quotation? A. Possibly Mr. Boyer, but I understood the whole transaction. To the best of my knowledge Mr. Boyer told me what to do, and of course I did what he said.

Q. According to the best of your knowledge have you any recollection about it now? A. Mr. Boyer gave me the instructions.

Q. What instructions did Mr. Boyer give you? A. To buy the stock for Mr. Colwell and have it delivered to him as soon as possible, which he was going to pay for.

Q. Have you any means of fixing what time in the day these different transactions occurred, except it was in the afternoon? A. The natural form of procedure —

Q. No, I want your recollection. A. No; I could say safely after 1 o'clock, that is all.

Q. The checks as they were delivered to you — was there anyone present except you and Colwell? A. Mr. Boyer might have been sitting at his desk in that room.

Q. No, I simply want your recollection; do you recall now? A. No, sir.

Q. Did you make any notation of the checks or examine them at all? A. No, sir.

Q. Didn't you examine the checks? A. I examined the checks to see they were certified —

Q. Just listen to my question. Did you examine the checks? A. Yes.

Q. When they were delivered to you? A. Yes.

Q. What examination did you make of them? A. Just to see that they were certified.

Q. Anything else? A. No, sir.

Q. Did you examine them to see as to the amounts? A. No, sir.

Q. Did you deliver the stock to Colwell as he delivered the checks and currency to you? A. Yes.

Q. Did you immediately right then and there before you took the checks and the currency to the deposit clerk deliver the stock to Colwell; that is, were the acts almost simultaneous? A. No, sir.

Q. What did you do first? A. Just handed him the stock.

Q. He handed you the checks and currency, and you handed him the stock? A. That is the idea.

Q. And then you took the currency and the checks to your deposit clerk? A. Yes, sir.

Q. And you made no examination whatever of the checks except to see that they were certified? A. Yes, sir.

Q. Are you clear about that? A. I am clear to this fact, that I handed the stock to Mr. Colwell, and he in turn handed me the currency and checks.

Q. Which occurred first? A. I handed him the stock.

Q. Did you do anything in this connection except take them and see they were certified and hand them to the deposit clerk? A. I just saw that they were certified and possibly nine chances out of ten I saw I had the right amount of money.

Q. Well, now, then, that is what I am getting at. Did you do that? A. I think I did.

Q. Well, now, have you any recollection? Not what you think, but I want your recollection. Do you recall it? A. I can't say that I do.

Mr. Hinman.— That is all.

The President.— That is all.

(Witness excused.)

Mr. Stanchfield.— We desire to recall for a moment Mr. Morgenthau to the stand. Take the chair, Mr. Morgenthau.

HENRY MORGENTHAU, a witness called on behalf of the Managers, recalled for further direct testimony, having been previously sworn, testified as follows:

Direct examination by Mr. Stanchfield:

Q. Mr. Morgenthau, have you been abroad during the past summer? A. Yes, sir.

Q. When did you return? A. On September second.

Q. September second? A. Yes, sir.

Q. Since your return have you had any personal interview with the respondent, Governor Sulzer? A. I have not.

Q. Have you had any communication with him by letter? A. I have.

Q. Have you had any by telegram? A. I think so; I am not sure.

Q. Have you had any communication with him by telephone?

Senator Blauvelt.— Can't hear.

Mr. Stanchfield.— You will have to speak up so that they can all hear you.

Mr. Brackett.— Let the stenographer read the last two questions and answers.

The President.— Read it, stenographer.

(The stenographer thereupon read the record as follows: "Q. Since your return have you had any personal interview with the respondent, Governor Sulzer? A. I have not. Q. Have you had any communication with him by letter? A. I have. Q. Have you had any by telegram? A. I think so; I am not sure. Q. Have you had any communication with him by telephone—)".

The Witness.— I have.

Q. Was that long distance telephone? A. Yes, sir.

Q. When did you have a long distance telephone with him? A. It was either September 2d or 3d.

Q. Immediately after your arrival in this country? A. Yes, sir.

The President.— Speak up loud, if you please.

The Witness.—Yes. Excuse me.

Q. Now, did Governor Sulzer call you on the phone, or did you call him? A. Governor Sulzer called me on the phone.

Q. Where were you at the time? A. I was at my daughter's house, in Port Chester.

Q. New York? A. Yes, sir.

Q. Port Chester, N. Y.? A. Yes, sir.

Q. Did you have a telephonic conversation with him at that time? A. I did.

Q. Tell us what it was? A. He passed the usual complimentary talk about my return, and he asked me whether I would come up to see him at once, to Albany. I told him I would not; that I had to go to Washington, probably spending a week there, and that I did not think, now that I had accepted a National position, that I would care to come up to see him under the existing circumstances. So he said to me, "If you are going to testify, I hope you will be easy with me," and I answered him that I would testify to the facts.

Mr. Stanchfield.— Did you all hear that?

Q. Have you related all the conversation with him? A. I think so. All of any importance.

Q. Well, let me see if I cannot refresh your recollection. Wasn't there something said by him to you upon the subject of how your check to him should be treated in your testimony? A. I don't think he mentioned the check.

Q. Well, your contribution? A. No — I think — he said something about that I should treat the affair between us as personal.

Q. As personal? A. Something like that.

Q. That you should treat the affair between you as personal, and what did you say? A. That I could not.

Q. That you could not, and that followed that part of the conversation in which he asked you to be easy in your testimony? A.

Of course, you have taken me by surprise. I don't remember the exact words, but that states the substance of it; which was mentioned first or last, I do not remember.

Mr. Stanchfield.— That is all.

Cross-examination by Mr. Marshall:

Q. You say you don't recollect the exact words of that conversation? A. I don't.

The President.— Mr. Marshall, your back is turned.

Mr. Marshall.—Yes, excuse me, your Honor. That was about the only question I wanted to put. That is all.

Mr. Stanchfield.— That is all, Mr. Morgenthau.

(Witness excused.)

Mr. Kresel.— Mr. Reynolds.

CHARLES A. REYNOLDS, recalled.

By Mr. Kresel:

Q. Mr. Reynolds I want to get the numbers of those certificates. Will you please state the numbers of the certificates of the Big Four stock that you delivered to Mr. Colwell? A. C-18866.

The President.— I cannot hear that, even here, Mr. Witness. Now, will you kindly speak loud so the furthest gentleman can hear you.

The Witness.— C-18866, and C-25884.

The President.— Those are the numbers of the certificates of stock that you delivered over to Colwell?

The Witness.— Yes, sir.

The President.— You didn't get them transferred. I suppose somebody else's name was given you?

The Witness.— They were in the name — I don't know what name they were in.

The President.— You only gave the order that morning for the purchase.

The Witness.— That day.

Q. Was each certificate for 100 shares? A. Yes, sir.

Mr. Kresel.— That is all.

One more question, and then I will be through. I want to recall Mr. Boyer.

PHILIP BOYER, recalled.

Examination by Mr. Kresel:

Q. Was this transaction you have been testifying about the only transaction that Frederick L. Colwell ever had with the firm of Boyer, Griswold & Company? A. Yes, it was.

Mr. Kresel.— That is all.

Examination by Mr. Hinman.

Q. Just one question. Have you any present recollection as to the time of day when Mr. Colwell had his first talk with you on October 16, 1912, in reference to buying 200 shares of Big Four stock? A. Will you repeat that, please?

The President.— Read it, Mr. Stenographer.

The question was read by the stenographer as follows: "Q. Have you any present recollection as to the time of day when Mr. Colwell had his first talk with you on October 16, 1912, in reference to buying 200 shares of Big Four stock?"

The Witness.— No, I don't remember now particularly.

Q. Are you able to state whether it was before or after twelve o'clock, noon? A. No, I am not.

Q. Were you present at the time when Mr. Murray delivered the stock to Mr. Colwell? A. I don't think so, no.

Q. Did you remain in your office from the time that you had the first talk with Mr. Colwell, up to the time until after the transaction was closed, or don't you know about that? A. I don't

know anything about that, because they were two entirely separate parts of the organization.

Q. Did you or Mr. Colwell go out of your office after you had had the first talk with him? A. He went out of my private office. I don't know whether he went out of the main office.

Q. To what employees in your office did you give any directions in connection with the purchase and delivery of this stock? A. To the order clerk, Mr. Murray.

Q. Did you give any instructions to anyone else? A. I don't remember doing so, but I must have instructed Mr. Reynolds that he delivered, a cash delivery.

Q. You have no recollection of it, but you assume that it must have been so? A. Yes.

Mr. Hinman.— Nothing further.

Mr. Kresel.— That is all. I call Mr. Gwathmey.

The Clerk.— You do solemnly swear that the evidence you shall give upon this hearing upon certain articles of impeachment, against William Sulzer, as Governor of this State, shall be the truth, the whole truth and nothing but the truth, so help you God.

Mr. Gwathmey.— I do.

The Clerk.— What is your full name?

Mr. Gwathmey.— James Temple Gwathmey.

JAMES TEMPLE GWATHMEY, a witness called on behalf of the Managers, having been first duly sworn in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Kresel:

Q. Mr. Gwathmey, what is your business? A. I am in the cotton business.

Q. Cotton broker? A. Cotton merchant.

Q. Cotton merchant? A. Yes, sir.

Q. Do you know Mr. Sulzer, the Governor? A. I have met him.

Q. You have? A. Just shaking hands.

The President.— Speak as loudly as you can, witness, please.

Q. You are not very intimate with him? A. I am not.

Q. Well, on the first of November, 1912, do you remember writing a letter to Mr. Sulzer? A. I don't recollect it, but I think you have a copy of it.

Mr. Kresel.— Yes. Will the gentlemen please produce the Gwathmey letter.

Mr. Herrick.— We haven't it.

Mr. Kresel.— You have not.

Q. Now, please look and state if that is a copy of the letter that you sent to Mr. Sulzer (counsel passes paper to witness). A. (After examining) Yes, sir, that is it.

Mr. Kresel.— I offer the letter in evidence.

(The letter offered in evidence was received and marked Exhibit M-63.)

Mr. Kresel.— This letter reads as follows:

"11-1-12.

(Standing for November 1, 1912.)

"Hon. William Sulzer, 115 *Broadway, City:*

"Dear Sir.— Enclosed please find $100, which I wish you would hand to the people who are conducting your personal campaign, as I wish this money to be devoted to that cause alone.

"Yours very truly."

Q. And was it signed by you, Mr. Gwathmey? A. I think so, or my secretary.

Q. Either by yourself or your secretary? A. Yes, sir.

Q. Now, did you enclose a check — well, if the secretary signed it, did he sign your name, J. Temple Gwathmey? A. Yes.

Q. Did you enclose a check with that letter? A. I did.

Q. Now, please look at that and state whether that is the check (counsel passes paper to witness). A. (After examining) That is the check.

Q. And was the check —

Mr. Kresel.— I think it is already marked. Yes, I showed the witness Exhibit 38, Mr. Stenographer.

Mr. Herrick.— That is the one in evidence, not for identification?

Mr. Kresel.— No, no, it is in evidence.

Q. Was this check paid subsequently? A. I presume so.

Q. And the voucher was returned to you by your bank? A. I think so.

Q. Did you get an acknowledgment from Mr. Sulzer? A. I don't recollect; I think you have something there.

Q. Now, look at this, please, and state whether that is the acknowledgment you received (counsel passes paper to witness). A. (After examining) Yes.

Mr. Kresel.— I offer that in evidence.

(The letter offered in evidence was received and marked Exhibit M-64.)

Mr. Kresel.— This letter is on the stationery of the Committee on Foreign Affairs, and reads as follows:

"115 Broadway, New York, *November* 4, 1912.
"J. Temple Gwathmey, Esq., care *George H. McFadden & Brother, 3 South William street.*"

Q. Is that the firm with which you are connected, Mr. Gwathmey? A. Yes.

Mr. Kresel.—(Reading):

"My dear Mr. Gwathmey.— Many thanks for your very kind letter. I certainly appreciate all you say and all you have done. With best wishes believe,

"Very sincerely your friend,

"William Sulzer."

Mr. Kresel.—You may examine.

Mr. Herrick.— No questions.

Mr. Hinman.— Just a moment, if I may be permitted.

Cross-examination by Mr. Hinman:

Q. I will ask you to look at this check, Exhibit No. 38, and tell me whether or not when it was returned to you as a canceled voucher, it had on the back of it the indorsement, the rubber stamp indorsement of William Sulzer, and the indorsement of Louis A. Sarecky, and the stamp of the bank?

The President.— Doesn't the check show that for itself?

Mr. Hinman.—Well, I want to show that it was there when it was returned to him. That is, that indorsement was there then.

Q. Well, are the indorsements on the check as they appear to-day, were they on there when the check was returned to you? A. I never looked on the back of it before.

Senator Blauvelt.—We can't hear what the witness says, Mr. President.

Mr. Kresel.— There will be no question made by the Managers but that those indorsements were there.

Senator Pollock.— Mr. President.

The President.— Senator Pollock.

Senator Pollock.— I want to ask the witness a question.

The President.— Senator Pollock.

By Senator Pollock:

Q. Will you please examine Exhibit 38, to tell me whether that has any indorsement except the name of William Sulzer and Louis A. Sarecky, including the bank indorsements? A. William Sulzer, Louis A. Sarecky. That is all.

Q. Anything else? A. Nothing that I see except the bank notation, probably.

By the President:

Q. Isn't there a stamp showing the bank? A. I presume that is what is here (indicating).

Mr. Marshall.— It is on the front.

Mr. Brackett.— That is what the Senator asked for, including the bank indorsements.

Mr. Hinman.— He did.

By Senator Pollock:

Q. What I wanted to know is whether that check was deposited in the deposit account, or whether that check was presented to the paying teller of the bank, and was drawn on and the cash received by somebody?

The President.— How can he tell? He signed the check that was all, and it comes back, and that is here.

Mr. Marshall.— I might answer the question of the Senator by saying that Managers' Exhibit M-27 shows that that check was deposited to the account of Sarecky in the Mutual Alliance Trust Company, page 702, second item.

Mr. Kresel.— I think I can clear up this mystery. The reason that there is no stamp of the bank as showing a deposit in that bank, is because this check is drawn on the very bank in which it was deposited, the Mutual Alliance Trust Company. That is correct. There is no question about that.

Mr. Brackett.— And the stamp of that company is there?

Mr. Kresel.— And there is a stamp on the face of the check, "Mutual Alliance Trust Company of New York, 35 Wall street, Paid."

Mr. Herrick.— And giving the date of deposit?

Mr. Kresel.— No, there is no date there, but there is no question but that it was deposited in the Mutual Alliance Trust Company; at least the Managers will not claim otherwise.

Mr. Herrick.— That is all we want.

Mr. Kresel.— Is that satisfactory to you?

Mr. Herrick.— Entirely.

Mr. Kresel.— That is all, Mr. Gwathmey.

(Witness excused).

Mr. Kresel.— I call Mr. Neville.

The Clerk.— You do solemnly swear that the evidence which you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer, as Governor of this State shall be the truth, the whole truth and nothing but the truth, so help you God?

Mr. Neville.— I do.

The Clerk.— What is your full name, please?

Mr. Neville.— George W. Neville.

GEORGE W. NEVILLE, a witness called on behalf of the Managers, having been first duly sworn in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Kresel:

Q. Mr. Neville, what is your business, please? A. I am in the cotton business.

Judge Collin.— We can't hear.

Q. All of the Court must hear you? A. In the cotton business.

Q. Are you a member of some firm? A. Stephen M. Weld & Company and Weld & Neville.

Q. Stephen M. Weld & Company, and what other firm? A. Weld & Neville.

Q. And your office is in the city of New York? A. Yes, sir.

Q. You are cotton brokers and investors? A. Merchants.

Q. Merchants? A. Yes, sir.

Q. Are you a member of the Cotton Exchange in New York? A. Yes, sir.

Q. And were you a member of the Cotton Exchange in the month of October and in the month of November, 1912? A. Yes, sir.

Q. Do you know the firm of Gwathmey & Company? A. Yes, sir.

Q. And are they cotton brokers and cotton merchants? A. Yes, sir.

Q. And members of the Cotton Exchange? A. Yes, sir.

Q. Do you know Mr. Mitchell, who is a member of that firm? A. Yes, sir.

Q. Do you know also Mr. Mandelbaum? A. Yes, sir.

Q. What is his first name? A. L. Mandelbaum — Leopold.

Q. Leopold Mandelbaum? A. Yes, sir.

Q. And is Mr. Mandelbaum likewise a member of the Cotton Exchange? A. Yes, sir.

Q. Now, on the 1st of November, 1912, did you give any money to Mr. Mandelbaum? A. I did.

Q. How much did you give him? A. My recollection is it was $200.

Q. In cash? A. Yes, sir.

Q. And on the same day, November 1, 1912, did you get this check from Gwathmey & Company? A. Yes, sir.

The President.— Is that another check in addition to the one the previous witness spoke about?

Mr. Kresel.— Yes, your Honor.

Q. Well, now, will you state, Mr. Neville, about this check of Gwathmey & Company, and about the $200 in cash which you gave to Mr. Mandelbaum, where did that money come from? A. The $200 was part of a large amount, a larger amount, that was contributed by several merchants in New York, to be given to defray the campaign expenses of several candidates running for various offices who were friendly to the merchants, or the merchants were friendly to them.

Q. I see. Well, now, without inquiring at the present time how much money was contributed in all, can you state to the Court the names of the persons or firms that made the contribution? A. I told you when you were in my office in New York the other day that I kept no record of those contributions.

Q. Yes, you did. A. I have since looked at my books and found that I didn't keep any record of those contributions, but I cashed the checks, made the division, and told the contributors of the division made.

The President.— Did you hear that, gentlemen?

A Member of the Court.— No.

The President.— Stenographer, just read that answer there.

The stenographer thereupon read the answer of the witness referred to as follows: "A. I have since looked at my books and found that I didn't keep any record of those contributions, but I cashed the checks, made the division, and told the contributors of the division made."

By the President:

Q. You cashed the checks, got the money, and then divided it up among the various candidates? A. Yes, sir; and Mr. Sulzer was sent $200.

By Mr. Kresel:

Q. And is that the $200 that you gave to Mr. Mandelbaum? A. Yes, sir. And if you would like an explanation how Mr. Mandelbaum gave the money I would be glad to give it to you.

Q. I think you better have Mr. Mandelbaum do that. Now, I still would like to get your best recollection as to the names of the persons that made the contributions. Now, one of them was Gwathmey & Company? A. Yes, sir.

Q. Now, can you from recollection tell us the names of some others? A. My recollection, as near as I can remember the matter, is, my own firm, Stephen M. Weld & Company, gave $100, and the firm of Hubbard Bros. & Company gave $100, and Gwathmey & Company gave $100; and I am uncertain about the others; I can't recall them, not near enough, your Honor, to give testimony.

By the President:

Q. Well, you say that you divided it? A. Yes, I divided it among three or four different candidates.

Mr. Kresel.— Now, I offer in evidence this check of Gwathmey & Company.

(The check offered in evidence was received in evidence and marked Exhibit M-65.)

Mr. Kresel.— I have no photograph of this check. I got it too late to make it.

The President.— Read it.

Mr. Kresel.— I shall read it. It is headed (reading):

"GWATHMEY & COMPANY.

2350 "NEW YORK, *November* 1, 1912.

"FARMERS' LOAN AND TRUST COMPANY,

"22 William Street.

"Pay to the order of George W. Neville $100 one hundred dollars.

"Signed,

"GWATHMEY & COMPANY."

It is endorsed: "George W. Neville. May Mutual Alliance Trust Company, or order. Stephen M. Weld & Company," and then the stamped endorsement of the Mutual Alliance and the National Bank of Commerce and the Farmers' Loan & Trust Company.

Q. When you gave the $200 to Mr. Mandelbaum, what did you say to him? A. I can't recall just what I said.

Q. I mean in substance? A. In substance, here was $200, which we want given to Mr. Sulzer for his campaign expenses. That was the intent of the collection.

Q. And did you tell Mr. Mandelbaum to deliver the money? A. Mr. Mandelbaum and I started to go to deliver it, but I live in Jersey, and we were caught in a rainstorm and had to take shelter in one of the buildings on Broadway, and before the rain was over I would have missed my train if I had gone there, so Mr. Mandelbaum went alone, and I had to run to catch my train and got soaking wet to catch it.

Senator Brackett.— I suggest that the stenographer read the answer. They could not hear it.

The President.— The witness says they started to give it to Mr. Sulzer in person; a rainstorm came up and they had to seek shelter, and before the rain got over, or when it got over, it was too late for him to catch a train. He left Mr. Mandelbaum to go on, and he went and caught his train. That is the point of it.

Mr. Kresel.— That is all, Mr. Neville, unless the gentlemen over there want to ask you something.

(Witness excused.)

Mr. Kresel.— I will call Mr. Mandelbaum.

The Clerk.— You do solemnly swear that the evidence which you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer, as Governor of this State, shall be the truth and nothing but the truth, so help you God.

The Witness.— I do.

The Clerk.— What is your full name?

The Witness.— Luitpold Mandelbaum.

LUITPOLD MANDELBAUM, a witness called in behalf of the Managers, having been first duly sworn in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Kresel:

Q. Mr. Mandelbaum, are you a member of the Cotton Exchange? A. Yes, sir.

Q. You are a cotton broker? A. Yes, sir.

The President.— Please speak, witness, so that the furthest gentleman in the back row can hear you?

The Witness.— I will, sir.

Q. You know Mr. George W. Neville? A. Yes, sir.

Q. The gentleman just preceding you? A. Yes, sir.

Q. Do you remember going to Mr. Sulzer's office in the month of November, 1912? A. I don't know exactly the date, but the receipt will bear it out. We did.

Q. You did go to the office? A. Yes, sir.

Q. Do you remember where that office is? A. Not exactly; somewheres near the Trinity building, I don't know whether the first building or the second building.

Q. On Broadway? A. On Broadway.

Q. When you went there, did you have anything with you? A. I had $200 with me. That is, I had other things with me.

Q. Who gave it to you? A. Mr. Neville.

Q. What did Mr. Neville tell you to do with it? A. The way I came to — I can make a statement, can't I?

Q. Certainly. A. The way I came to go up to Mr. Sulzer was I went up with Mr. Neville.

The President.— Speak louder.

The Witness.— I went with Mr. Neville and we were caught in a terrific rainstorm, and we went into a building on the corner of Wall and Broadway. We were in there about a half hour. It stormed fearfully, and Mr. Neville told me that he had to go. He had to make his train, and asked me to take the $200 and bring it up to Mr. Sulzer's office.

Q. And to say what about the $200?

Mr. Herrick.— Wait a minute.

Mr. Kresel.— Well —

Mr. Herrick.— That is objected to.

Mr. Kresel.— I was asking the witness to state what Mr. Neville told him to say about the $200.

Mr. Herrick.— I object to that as hearsay.

Mr. Kresel.— That is upon the same theory that the other conversations from the Governor's friends have been admitted.

The President.— I think this is a little different. You may do that in favor of a person, but you can't against them. There is the difference.

Q. You went to the office, did you? A. I did.

Q. What happened there? A. I went there, and Mr. Sulzer was not there. I met Mr. Sarecky.

Q. Mr. Sarecky. Go on. What did you say to him. What did you do? A. I told Mr. Sarecky I gave him $200 from Mr. George W. Neville for Mr. Sulzer.

Q. For what? A. I don't think I told him anything.

Q. Did you tell him who Mr. Neville was? A. I told him of course, who Mr. Neville was. He was a member of the New York Cotton Exchange and a friend of Mr. Sulzer.

Q. Did you tell him that? A. I think I did. I am not quite sure.

Q. Did you tell him where the money came from?

The Witness.— I didn't tell him where the money came from because I didn't know.

The President.— Did you tell him whether it was to pay a bill you owed him, or anything else; did you make any allusion to what it was?

The Witness.— I did not. The inference, of course, on my part was —

Q. No, no. Don't tell us your inferences.

Mr. Herrick.— That is objected to.

Q. I want to know what you said to Mr. Sarecky? A. Not anything, except it was $200 George W. Neville requested me to hand to Mr. Sulzer. Mr. Sulzer not being there, I handed it to Mr. Sarecky.

Q. Now, may I ask what message Mr. Neville sent to Mr. Sulzer with the $200?

Mr. Herrick.— That is objected to as incompetent.

The President.— That is not competent.

Mr. Kresel.— That is not competent?

The President.— No, you see it works a different way.

Q. Did you deliver the $200 to Mr. Sarecky? A. I did.

Q. What did Mr. Sarecky say? A. Mr. Sarecky said he was very much obliged for the money.

Q. Is that all he said? A. That is about all he said. Then I requested Mr. Sarecky that inasmuch as it is money I paid him for others, I would like to have a receipt, and I got that receipt.

Q. Now, look at that. Is that the receipt? A. It is.

Q. Is it? A. It is.

Mr. Kresel.— I offer it in evidence.

(The receipt offered in evidence was received in evidence and marked Exhibit M-66.)

Mr. Kresel.—(Reading):

"NEW YORK, *November 1st.*

"Received from Mr. Mandelbaum, $200.

"LOUIS A. SARECKY."

Q. Have you stated, Mr. Mandelbaum, as far as your recollection serves you, all of the conversation that you had with Mr. Sarecky? A. I think I did.

Q. Did you have any talk with him about Mr. Sulzer's campaign? A. I don't exactly recall it, but I would not positively state that I didn't.

Q. What is your best recollection about it? A. I don't think I did. It was very late. In fact I never knew Mr. Sarecky. It was the first time I ever saw him.

Q. Did you know who he was when you gave him this money? A. I didn't. He told me he was Mr. Sulzer's secretary. I never heard of him or saw him before.

Q. Did Mr. Sarecky say anything to you about Mr. Sulzer's campaign?

Mr. Herrick.— That is objected to as incompetent. Mr. Sulzer was not there.

The President.— Did he say anything — you inquired, I suppose, when you went to the office?

The Witness.— I did, your Honor.

The President.— Now, can't you tell according to your best recollection just what happened from that time?

The Witness.— I asked for Mr. Sulzer and Mr. Sarecky told me that Mr. Sulzer was not there; that he was his secretary, and that he would take the money, and I gave him the money.

Mr. Kresel.—All right. That is all.

Mr. Herrick.— Nothing.

(Witness excused.)

The President.—We will take a recess now, gentlemen.

The Crier.— Hear ye, hear ye, hear ye, this Court shall now take a recess until 2 o'clock this afternoon.

Whereupon, at 12:30 P. M., adjourned to 2 P. M.

AFTERNOON SESSION, 2 P. M.

The Crier.— Judges of the Court of Impeachment.

The President.— Call the roll.

The Clerk thereupon called the roll and found a quorum present with the following absentees:

Judge Gray, Senator Griffin (excused); Senator Healy, Senator Seeley (excused).

The Crier.— Hear ye, hear ye, hear ye, this Court now resumes its session from recess.

Mr. Todd.— Mr. W. W. Peck.

Mr. Marshall.— Before you call Mr. Peck I would like to recall Mr. Gwathmey for one minute.

J. TEMPLE GWATHMEY, recalled:

By Mr. Marshall:

Have you that letter that Mr. Gwathmey produced?

Mr. Kresel.— Yes, here it is.

Q. Mr. Gwathmey, I show you Exhibit M-63. Do you wish to make any explanation with regard to that letter? A. No, sir.

Q. What were your politics in the fall of 1912? A. I am a Republican.

Q. Republican. Did you vote for any other candidate on the Democratic ticket that year besides Governor Sulzer? A. I did not.

Q. You wanted that fact to be understood at that time, did you? A. Yes, I did when I gave this letter.

Mr. Marshall.— That is all.

(Witness excused.)

Mr. Hinman.— If your Honor please, and with the consent of the attorneys on the other side, I call attention to page 702 of the printed record. The second name on the page, from the top of the page, the name there is J. F. Graftemerius. I would like to have that corrected in accordance with the fact, that the deposit slip shows that it is J. F. Gwathmey.

Mr. Brackett.— J. T.

Mr. Hinman.— Yes, J. T. It is an error in printing.

Mr. Kresel.— That is conceded.

The President.— Is that conceded?

Mr. Kresel.— Yes, that is conceded.

The President.— The correction will be made.

Mr. Todd.— Duncan W. Peck.

The Clerk.— You do solemnly swear that the evidence which you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer, as Governor of this State, shall be the truth, the whole truth and nothing but the truth, so help you God.

Mr. Peck.— I do.

The Clerk.— What is your full name?

Mr. Peck.— Duncan W. Peck.

DUNCAN W. PECK, a witness called on behalf of the Managers, having been first duly sworn in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Todd:

Q. Mr. Peck, you are the Superintendent of Public Works of the State of New York? A. I am.

Q. How long have you held that office? A. Nearly two years.

Judge Collin.— We can't hear.

Q. Speak up loud. A. Nearly two years.

Q. You will have to speak very loud, so that the gentlemen on the last row can hear you, Mr. Peck. Do you know William Sulzer, the respondent? A. I do.

Q. How long have you known him? A. I think about 20 years.

Q. Has your acquaintance been friendly? A. It has.

Q. Do you recall when he was nominated for Governor of the State of New York? A. I do.

Q. After his nomination and before his election did you see him and have a talk with him? A. Once I did.

Q. Where was that and when was it? A. In the Rensselaer Inn, in Troy.

Q. What was the occasion? A. A political meeting there.

Q. A ratification meeting of the nomination of the Democratic candidates for State offices? A. I believe so.

Q. State the conversation that you had with William Sulzer, the respondent, at that time? A. I met him in the lobby and said "Governor, I would like to give you this for your campaign."

Q. What did you give him when you made that remark? A. I gave him a $500 bill.

Q. What did he say? A. He said "Thank you."

Q. Was there anything else said on that occasion between you and Governor Sulzer about that contribution? A. Yes, sir.

Q. What? A. I said there were no strings on it and he need not feel at all obligated to reappoint me.

Q. You were at that time the Superintendent of Public Works? A. I was.

Q. Since that have you had any conversation with the respondent, William Sulzer, in reference to that contribution? A. That was a confidential conversation. Must I give it?

The President.— Yes, you must give it.

Q. State the conversation, first stating when it was and where it was? A. I don't know when it was. It was somewhere after the 19th of July in the Executive Chamber.

Q. July, 1913? A. Somewhere after that time.

Q. In the Executive Chamber? A. In the Executive Chamber.

Q. In Albany? A. In Albany.

Q. Now, state the conversation? A. I had received a communication from the so-called Frawley Committee.

Q. A letter? A. A letter.

Q. Have you that letter? A. No, I have not.

Q. Have you looked for it? A. I have.

Q. Have you been able to find it? A. I have not.

Q. What was the substance of that letter?

The President.— The point is what passed between him and the respondent.

Mr. Todd.— If your Honor please, it has to do as I understand with what had passed between them.

The President.— When that appears, you can go back to it.

Q. Did you show this letter to the respondent, William Sulzer, at this time? A. I did.

The President.— Now you can go back to it.

Q. Will you state the substance of that letter? A. Why, it was a request to state what donation, contribution I had made; and whether a check or otherwise; and I don't remember all of it, but that was the gist of it.

Q. To produce and give that information to whom? A. To this Committee.

Q. Frawley committee? A. Yes, sir.

Q. Now, state the rest of the conversation? A. I showed the letter to the Governor and asked him what I could do about it.

Q. What did he say? A. He said "Do as I shall; deny it."

Q. What else was said if anything? A. Why, I said, "I suppose I shall be under oath." He said "That is nothing. Forget it."

Q. Was there anything else said? A. Nothing more.

Mr. Todd.— Your witness.

The Witness.— Is that all?

The President.— One moment. See if there is any cross.

Cross-examination by Mr. Hinman:

Q. Have you any means of fixing the date when you saw the Governor?

The President.— Where you are your back is turned exactly to the body of the Court.

Q. Have you any means of fixing the date when you saw the Governor in the Rensselaer Inn at Troy? A. It was —

Q. And gave him this $500 bill? A. Why, it was the night of the Democratic ratification; I think the 18th of October.

Q. 1912? A. This year. Last year, rather.

Q. That is 1912? A. Yes.

Q. Where were you at the time? A. In the Rensselaer Inn.

Q. I mean in what particular room, do you remember? A. In the lobby.

Q. State whether or not there were other people there in the lobby at the time? A. There were a lot of people there.

Q. Was it before or after the meeting? A. It was after the banquet.

Q. In the evening? A. Sure.

Q. This conversation that you have detailed in the Executive Chamber; I asked you whether you made any memorandum or notes of what was said between you and the Governor? A. I did not.

Q. Are you giving here, or do you attempt to give here now the exact language he used, or are you giving your recollection of the substance of it? A. The exact language.

Q. Word for word? A. Word for word.

Q. You can't be mistaken as to a word? A. No.

Q. Not in a word said by him or a word said by you? A. Not that conversation.

Q. Not a word? A. No, sir.

Mr. Hinman.— Nothing further.

(Witness excused.)

Mr. Kresel.— I will call Mr. Cox.

The Clerk.—You do solemnly swear that the evidence that you

shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer as Governor of this State shall be the truth, the whole truth and nothing but the truth, so help you God?

The Witness.— I do.

The Clerk.—What is your full name?

The Witness.— John W. Cox.

JOHN W. COX, a witness called in behalf of the Managers, having been first duly sworn, in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Kresel:

Q. Are you Mr. Cox or Dr. Cox? A. I am both. I am a graduate of medicine and also Mr. Cox.

Q. Then Dr. Cox, may I ask you whether you are practicing your profession? A. I am not.

Q. Are you a member of the Manhattan Club in New York? A. I am.

Q. And do you know Governor Sulzer? A. How is that?

Q. Do you know Governor Sulzer? A. Yes.

Q. How long have you known him? A. Let me see. I knew him prior to the Democratic national campaign in 1896. I should say about 17 or 18 years.

Q. And during Governor Sulzer's campaign for the Governorship you were quite active in his behalf, weren't you? A. Well, I couldn't say I was quite active; I was interested in his election, yes.

Q. Well, what I mean is this. Were you a member of any organization which was organized to help along his election? A. I was not.

Q. Do you remember what was known as the Business and Professional Men's Sulzer League, of which Mr. Hoyle was the Chairman? A. Well, I can't deny that. You know, often people come up to you and ask you to sign something and lend your name, and while I don't remember anything of the kind, I may have been; I cannot say; if I could see one of the papers to which my name was signed, I could tell you whether I signed it or not.

Q. I just wanted to forget it — A. (Interrupting.) I don't remember of such a thing.

Q. I just wanted to inquire whether you remember being one of the executive committee of that organization? A. I do not.

Q. You do not? A. I don't say that I was not, but I don't remember of being.

Q. Very well. Now, Doctor, you were subpoenaed to produce a certain check for $300. Have you it? A. I have. (Witness produces paper.)

Q. Now, did you draw this check? A. I did.

Q. On or about the date that it bears date? A. Exactly the date that it bears date.

Q. Now, after you drew the check, what did you do with it? A. I sent it to Theodore W. Myers.

Q. And who is Theodore W. Myers? A. He was treasurer for the purpose of raising some funds in the interest of the election of William Sulzer outside of the organization.

Q. I understand. And when you sent this check to Mr. Myers, did you send a letter with it? A. I did.

Q. Have you a copy of the letter? A. No; all my letters are longhand, and I don't take any copies of them.

Q. I see. Well, will you be good enough to give the Court the substance of that letter? A. Well, I do not, because I had a conversation with Mr. Myers over the telephone, and I told him I would send it to him; that is all; I don't remember what I said in the letter.

Q. Well, state if you will, the conversation that you had with Mr. Myers over the telephone?

Mr. Herrick.— That is objected to.

The President.— Who is Mr. Myers? I don't remember.

Mr. Kresel.— It now appears from the witness' testimony, Mr. Myers was the treasurer of an organization which had been gotten together for the purpose of promoting Mr. Sulzer's election, and this is one of the checks which went into the Boyer-Griswold account, about which witnesses testified this morning.

The President.— I do not believe he can do that. You will

have to ask the Court to infer what it may from the circumstances that he received it from the treasurer. Do you offer the check in evidence?

Mr. Kresel.— Not yet. I have not yet offered it. He did not receive it from the treasurer. He sent it to the treasurer.

The President.— I know, but I say you will have to rely on whatever inferences may be drawn if the respondent received the check.

Q. Did you have any talk with Mr. Sulzer about this check at any time? A. I never spoke to him about it. He never asked me for a contribution or a donation, or anything; I volunteered it.

Q. Either before you gave the check or since that time, you have had no conversation with Mr. Sulzer at any time? A. I never mentioned the amount of money to him, or any amount of money to him.

Q. I am not particular as to whether you mentioned the amount of money. Have you had any conversation with Mr. Sulzer about this check? A. Never.

By the President:

Q. Or about any contribution? A. No, sir.

Q. Did you speak about any contribution? A. No, your Honor.

By Mr. Kresel:

Q. Either by word of mouth or letter? A. Hold a minute. I will say this: That I told him I would do what I could to raise some money to help him along as best I could.

Q. To help him along in what? A. To help him along to become Governor of the State of New York.

Q. And when was that conversation and where? A. In the room of the Committee on Foreign Affairs in Washington.

Q. And was it before you gave this check or after that? A. Before.

Q. Before that? A. Yes. I did not say that I would give him anything at all myself.

Q. You have already stated the conversation, as I understand it? A. Read the notes, please.

Q. How did you happen to go to see him in Washington, did he send for you? A. Oh, no, I was there. I often go to Washington, and paid my respects to him.

Q. Now, in addition to that conversation, have you had any talk with Mr. Sulzer about this contribution of $300? A. With who?

Q. With Mr. Sulzer, or Governor W. Sulzer. A. I have no memory of ever speaking to him about it at all. I do not think I ever mentioned it to him.

Q. Well, did you have any other talks with him about money? A. I only knew that he would know all about it, because I sent the money, sent the check. That was quite sufficient. I never got an acknowledgment of it from him.

Q. Well, did you tell him that you would send a check to this treasurer, Mr. Myers? A. I did not.

The President.— He said that he did not say he would get any money at all, or that he would send him any money at all.

Q. Now, search your memory, Doctor, if you will, and tell the Court whether in addition to that talk that you had with him in Washington, you had other talks with him about raising money to help him become Governor? A. No, I do not think I did. I do not remember anything of the kind. I remember that some of my friends, and also friends of his came to me and asked me if I would be the treasurer, or to collect this money, and I said no, I would not, and then I think that I suggested Theodore W. Myers myself.

Q. As treasurer? A. Yes.

Q. And who was the chairman of this organization? A. It was not any organization. It was just simply somebody to collect the money.

Q. I see. A. Or to take the money, rather.

Q. In addition to your check for $300, what other checks or money did Mr. Myers, as treasurer, collect, in order to help Mr. Sulzer become Governor? A. I never asked him, never spoke of it, and do not know anything about any other check, with the ex-

ception of what he said he would give himself, and that was a conversation over the telephone. He told me he would give $1,000. I don't know whether he did or not. I hope he did.

Q. Now, Doctor, tell us how it came that you sent this check to Mr. Myers? A. Because I called him up over the 'phone and asked him if he would be treasurer, and he said he would.

Q. Treasurer of what, your check and his own? A. To take charge of the money.

Q. What money? A. Any money that might be collected for Mr. Sulzer.

By the President:

Q. You were speaking about collections from various persons, were you? A. His personal friends.

By Mr. Kresel:

Q. Was this check, regularly gone through your bank, and did the bank return this voucher to you? A. Yes, sir. I found that — I had to look for it; I found it with a stack of my vouchers after I — after this proceeding started.

Mr. Kresel.— I offer the check in evidence.

Mr. Todd.— Do you wish to see it?

Mr. Marshall.— Yes.

(Counsel examined paper.)

(The check offered in evidence was received and marked Exhibit M-67.)

Mr. Kresel.— This check bears the name of John W. Cox printed in the margin:

"No. 6320. NEW YORK, *October* 9, 1912.

"THE CHATHAM NATIONAL BANK

"Pay to the order of Theodore W. Meyers, Treasurer, Three hundred dollars.

"Signed JOHN W. Cox."

It bears the indorsement of Theodore W. Meyers and the stamped indorsement "Pay to the order of Manhattan Company, New York, Boyer, Griswold & Company," and then the stamped indorsement of the Manhattan Company.

The Witness.— You will notice that the check is not properly indorsed.

Q. I see. It is not indorsed Theodore W. Meyers, Treasurer, but just Theodore W. Meyers; is that what you mean? A. That is what I mean.

Mr. Kresel.— Very well. That is all.

The President.— Any cross?

Mr. Herrick.— Just two or three questions.

Cross examination by Mr. Herrick:

Q. Doctor, in answer to a question, you said that you told Mr. Sulzer that you would raise some money to help him along? A. Yes, sir.

Q. Then the question was put to you, help him along to what, and you said to become Governor? A. Yes, sir.

Q. Did you say that to Mr. Sulzer? A. No, sir.

Q. You are a member of the Manhattan Club? A. Yes, sir.

Q. And there was more or less conversation about Mr. Sulzer there? A. Yes, sir.

Q. About his financial condition? A. Yes.

Q. That he was impecunious? A. Yes.

Q. And you and a number of other gentlemen there made up your minds to help him along? A. Yes, sir.

Q. That is, you were to do something for him personally? A. Yes, sir.

Mr. Kresel.— Wait a minute.

The Witness.— I insist; I am a witness.

Mr. Kresel.— I object to that. Oh, Mr. Witness, you are only a witness.

The President.— When an objection is made you must not answer.

Mr. Kresel.— I object to the question.

The President.— This witness —

Mr. Herrick.— We can be heard, can we not, Mr. President?

The President.— Yes.

Mr. Herrick.— These articles of impeachment charge that these moneys were contributed for a cause, or a principle or a ticket, and that Mr. Sulzer diverted them from the support of that cause, from the support of that principle and from the support of that ticket.

Some of these gentlemen have testified that they made these contributions to help him along personally; not for the support of any cause. You had a witness here this morning who was a Republican and who voted for nobody else; who contributed to help Sulzer along and nobody else, not to sustain any principle, but for his personal benefit.

That is all I am attempting to show here.

The President.— You are going beyond this present witness and you are trying to include others.

Mr. Herrick.— We have had the others who testified to that. I am confining it to this witness and am simply illustrating what I am attempting to do and I think the principle that underlies it.

The President.— You will have to confine it to this witness.

Mr. Herrick.— I am confining it to this witness.

Mr. Herrick.— I will recast the question.

Q. Was this contribution made by you for the personal benefit of Mr. Sulzer and not for the ticket as a whole?

Mr. Kresel.— One moment, I object to that.

The President.— There will be some difference of opinion. Quite a number of the members of the court, the judges and Senators will take a different view from the Presiding Judge, so

I think we better just take a ruling on this and get this out of the way. Let us take a vote on this and get it settled.

Mr. Herrick.— May I merely state, I don't want to argue.

The President.— Yes, you can.

Mr. Herrick.— I don't want to argue; I simply want to state. The articles of impeachment, by looking at them, you will see, charge these moneys were contributed for the support of a cause. I am not pretending to use the exact words, but they state it is for the support of the ticket as a whole, for the support of a principle; that is the substance of it, and that he diverted it from that purpose; that he stole it, inasmuch as he did divert it from the special use for which it is contributed, and we are simply now trying to show this contribution was made for his personal benefit and no other.

The President.— Don't answer this, witness. I overrule the objection.

Mr. Brackett.— May I make a simple statement?

The President.— You may have the same privilege.

Mr. Brackett.— Article VI says, "that said money and checks were thus contributed and delivered to William Sulzer as bailee, agent or trustee, to be used in paying the expenses of said election and for no other purpose whatever."

Mr. Gwathmey's letter, although he was the Republican referred to by the counsel, who was supporting only Sulzer on the Democratic ticket, expressly says it is to be for his election expenses.

What we want to submit is, that the undisclosed intention of this witness — practically the same question as has been up before — is not competent evidence on the subject.

The President.— Now, don't answer.

Judge Hiscock.— May we have the precise question now asked read again.

The President.— Read the question.

The question was read by the stenographer as follows: "Was

this contribution made by you for the personal benefit of Mr. Sulzer and not for the ticket as a whole?"

Mr. Brackett.— May I also add that it calls for a conclusion.

The President.— Now, we will have a vote on this and let us get it out of the way for the future.

Senator McClelland.— Presiding Judge, for information, I would like to know whether we are considering the different forms or counts in this impeachment indictment collectively and the evidence is being taken generally as in support of the allegation of those separate counts, or whether we are taking up Count No. 1 or Article No. 1 and Article No. 2. There is a great deal of confusion and we would like to have some sort of a clearing up of that particular phase of the matter.

The President.— I suppose if this is competent on any count in these articles, it is competent now. The objection as I understand of the counsel for the Managers is that the testimony is in its nature incompetent to prove them.

Senator Carswell.— May I make a suggestion, if it is in order, that the counsel for the respondent could recast that question so it will clearly appear whether the money was to be used by him personally in his private capacity or for his personal benefit as a candidate for a particular office?

The President.— Counsel is at liberty to adopt the suggestion of a member of the Court or not.

Mr. Herrick.—Will you restate your suggestion, Senator?

Senator Carswell.—Why, the question as it is now cast might well be a contribution for him for his own personal benefit as a candidate and not for the benefit of the party or the principles that party represents; and then again a different answer might be given to it with respect to this use personally for his own private purposes, apart from his candidacy.

I think the point that is sought to be ruled on at this time in connection with the question is whether or not it was to be used for his personal private uses, apart from his candidacy.

The President.— Senator Thompson.

Senator Thompson.— I simply want to state I don't believe this question brings up the precise question ruled upon in reference to the testimony of the witness yesterday. I don't think this question brings it up.

The President.— I don't say it does absolutely, but I think we had better get a ruling of the Court on it.

Senator Thompson.— I think the question is so different that I am with the ruling of your Honor here and against the ruling of your Honor yesterday.

Mr. Herrick.— I intended to differentiate from the question yesterday.

Mr. Kresel.— Suppose you recast the question?

Mr. Herrick.— Read the question.

Senator Wagner.—As I understand the question it calls for the operation of the witness' mind at the time but not conveyed by him to anyone by any conversation. In other words, it is an undisclosed intent in his mind at the time. That is as I understand the question up before us.

The President.— I can say nothing more. If nobody asks for a vote on it on the ruling of the Presiding Judge it will stand and the testimony will be admitted.

Does anyone call for a vote on the ruling? If so, it will be taken.

Mr. Herrick.— Read the question.

Mr. Herrick.— Now, repeat the question, Mr. Stenographer, please.

(The stenographer thereupon read the question referred to as follows: "Q. Was this contribution made by you for the personal benefit of Mr. Sulzer and not for the ticket as a whole?")

Senator Brown.— Mr. President.

The Witness.— It was given to Mr. Sulzer for his personal benefit.

Senator Brown.— Mr. President.

The President.— Senator Brown.

Senator Brown.— I desire to vote upon it. I think that the evidence is incompetent. And my purpose is not particularly to exclude this particular evidence, but to exclude all kinds of evidence, of which we are likely to have much. We are here to try the intent of Governor Sulzer, not the intent of this witness, or of any other witnesses, and from my point of view it is wholly incompetent. When the question was under discussion before, I referred to a citation which I had occasion to make in a case in the Court of Appeals some time ago, and it struck me that it is pertinent.

The President.— Senator, if you will keep your voice up.

Senator Brown.— A case in Chancery in England, where the judge, presiding judge, said, that the plea is not good without showing that he certified the other of his pleasure, for it is common learning that the intent of a man is not triable, for even the devil does not know the intent of a man. Now, the great trouble with this class of evidence is that witnesses, long after it would seem, give their intention at the time according to the wishes when they are testifying, and it opens the field which has heretofore, it seems to me, been almost unknown. I think that it ought to be excluded, and I move that it is the sense of the Court that the evidence is inadmissible.

The President.— Call the roll.

Mr. Herrick.— Can I be heard for just a moment?

The President.— Yes.

Mr. Herrick.— This is intended obviously to bring out evidence that this contribution was made for the personal expenses of William Sulzer and not for the benefit of the rest of the ticket. The Election Law, the Corrupt Practices Law, provides that cer-

tain expenses of a candidate need not be accounted for. To illustrate, the circulation of literature that is not issued at regular intervals, telegrams, letters and a variety of things that are included in his personal expenses, for which he need make no account at all. Now, when money is contributed for his own personal benefit, where he has a right to use it and not account for it,— to a certain extent at least — he cannot be said to be diverting money that is given to him in his hands as bailee and trustee for somebody else. He cannot be bailee and trustee for himself.

The President.— I am very much in doubt as to whether that is so, but I will express no opinion now. Call the roll, Mr. Clerk.

Senator Duhamel.— Mr. President.

The President.— Senator Duhamel.

Senator Duhamel.— Attention is called to the fact that a large number of the members of this Court are not members of the bar, and as one of this number, I ask a liberal ruling on all questions in view of the public sentiment of the origin of these charges and the character of the accusers, and that in our original capacity as Senators, recognizing our obligations to our constituents, I believe when the Constitution was sustained that it was intended that the people and their representatives should take some hand in these impeachments, otherwise they would have left it to the Courts. I therefore protest against the rulings — against rulings that are too technical.

The President.— What was that?

Senator Duhamel.— Rulings that are too technical. Mindful of the words of counsel that such proceedings as this may be the result of a conspiracy of crooks and criminals to save themselves from prosecution as the result of chicanery or of parties prompted by other ulterior motives.

The President.— Call the roll. The question is,— you had better put it the same as the last, that is, shall the ruling of the Presiding Judge be sustained or not? Those who think that it should be sustained will say yes or vote aye. Those who think

the other way and think that the testimony should be excluded will say no.

The Clerk.— Senator Argetsinger.
Senator Argetsinger.— Aye.

The Clerk.— Judge Bartlett.
Judge Bartlett.— Aye.

The Clerk.— Senator Blauvelt.
(No response.)

The Clerk.— Senator Boylan.
Senator Boylan.— Aye.

The Clerk.— Senator Brown.
(No response.)

The Clerk.— Senator Bussey.
Senator Bussey.— Aye.

The Clerk.— Senator Carroll.
(No response.)

The Clerk.— Senator Carswell.
Senator Carswell.— No.

The Clerk.— Judge Chase.
Judge Chase.— Mr. President, this question it seems to me is simply supplementary to testimony already given by this witness, in which he says in substance that he made the contribution to aid Mr. Sulzer towards his election as Governor. I want therefore to explain my vote, and at present I vote Aye.

The Clerk.— Senator Coats.
(No response.)

The Clerk.— Judge Collin.
Judge Collin.— No.

The Clerk.— Judge Cuddeback.
Judge Cuddeback.— No.

The Clerk.— President Judge Cullen.
The President.— Aye.

The Clerk.— Senator Cullen.
Senator Cullen.— Aye.

The Clerk.— Senator Duhamel.
Senator Duhamel.— Aye.

The Clerk.— Senator Emerson.
Senator Emerson.— Aye.

The Clerk.— Senator Foley.
Senator Foley.— No.

The Clerk.— Senator Frawley.
Senator Frawley.— No.

The Clerk.— Senator Godfrey.
Senator Godfrey.— Aye.

The Clerk.— Judge Gray.
(No response.)

The Clerk.— Senator Griffin (excused).

The Clerk.— Senator Heacock.
Senator Heacock.— Aye.

The Clerk.— Senator Healy.
(No response.)

The Clerk.— Senator Heffernan.
Senator Heffernan.— Aye.

The Clerk.— Senator Herrick.
Senator Herrick.— Aye.

The Clerk.— Senator Hewitt.
(No response.)

The Clerk.— Judge Hiscock.
Judge Hiscock.— No.

The Clerk.— Judge Hogan.
Judge Hogan.—Aye.

The Clerk.— Senator McClelland.
Senator McClelland.— No.

The Clerk.— Senator McKnight.
Senator McKnight.—Aye.

The Clerk.— Senator Malone.
Senator Malone.—Aye.

The Clerk.— Judge Miller.
Judge Miller.— I vote aye, and I do it upon the broad ground stated by the Presiding Judge, and not on the theory that this question can be discriminated from the question we had up yesterday.

The Clerk.— Senator Murtaugh.
(Senator Murtaugh voting no, and making inaudible remarks.)

The Clerk.—Senator O'Keefe.
Senator O'Keefe.—Aye.

The Clerk.— Senator Ormrod.
Senator Ormrod.—Aye.

The Clerk.— Senator Palmer.
Senator Palmer.—Aye.

The Clerk.— Senator Patten.
Senator Patten.—Aye.

The Clerk.— Senator Peckham.
Senator Peckham.—Aye.

The Clerk.— Senator Pollock.
Senator Pollock.—No.

The Clerk.— Senator Ramsperger.
Senator Ramsperger.— Aye.

The Clerk.— Senator Sage.
Senator Sage.— No.

The Clerk.— Senator Sanner.
Senator Sanner.— Aye.

The Clerk.— Senator Seeley (excused.)

The Clerk.— Senator Simpson.
Senator Simpson.— No.

The Clerk.— Senator Stivers.
Senator Stivers.— No.

The Clerk.— Senator Sullivan.
(No response.)

The Clerk.— Senator Thomas (excused.)

The Clerk.— Senator Thompson.
Senator Thompson.— Mr. President, I vote Aye because I think this question can be properly distinguished from the one ruled on yesterday.

The Clerk.— Senator Torborg.
Senator Torborg.— Aye.

The Clerk.— Senator Velte.
Senator Velte.— Aye.

The Clerk.— Senator Wagner.
Senator Wagner.— Mr. President, I vote no in this case because I cannot under any principle of law understand how the witness can be called upon to testify now as to the operation of his mind at the time of the giving, which was not conveyed by any word of mouth either to the respondent or to any one of his agents.

The Clerk.— Senator Walters.
Senator Walters.— No.

The Clerk.— Senator Wende.
Senator Wende.— Aye.

The Clerk.— Judge Werner.
Judge Werner.— Mr. President, if this were an ordinary civil case I should stand with those Senators and Judges who question the correctness of this ruling, but rules of evidence are mostly rules of exclusion, and there are occasions when we must rise above mere rules of evidence in the interest of ascertaining the truth. For that reason I vote to sustain the ruling of the Chair.

The Clerk.— Senator Wheeler.
(No response.)

The Clerk.— Senator White.
Senator White.— Aye.

The Clerk.— Senator Whitney.
Senator Whitney.— Aye.

The Clerk.— Senator Wilson.
Senator Wilson.— Aye.

The Clerk.— Ayes 33, Noes 14.

The President.— You may answer the question.

Stenographer, read the last question and answer:

> "Q. Was this contribution made by you for the personal benefit of Mr. Sulzer and not for the ticket as a whole? A. It was given to Mr. Sulzer for his personal benefit."

By Mr. Herrick:

Q. Doctor, you are a member of the Manhattan Club, I believe you said? A. Yes, sir.

Q. There are quite a number of friends of Governor Sulzer also members? A. Yes, sir.

Q. His campaign I suppose was the subject of discussion somewhat there? A. Yes.

Q. And his financial circumstances? A. Oh, yes, all the time.

Q. You had heard his financial condition discussed? A. Oh, yes. I was always led to believe —

Mr. Brackett.— No, I object to what he heard.

Mr. Herrick.— Yes, that may go out.

Q. That discussion of his financial condition and what you had understood it to be, was that one of the causes of your making this contribution?

Mr. Brackett.— I make the same objection.

The President.— Objection sustained.

Mr. Herrick.— That is all.

By Mr. Brackett:

Q. Dr. Cox, you had heard the financial condition of Mr. Sulzer discussed prior to this time, had you not? A. Oh, for years.

Q. Have you ever passed around requests for contributions for him before this time? A. No; he had a position, he was in Congress, he was making $5,000 a year.

Q. How much a year? A. $5,000, that was some years ago.

Q. And you know that at the time these contributions were made that he was getting $7,500 a year as a Congressman? A. I did.

Q. Did you make the request for contributions because he was a candidate for Governor or not? A. Yes.

Q. Solely for that reason, was it not? A. Yes, because — can I go on?

Mr. Brackett.— Oh no, he said solely for the reason.

The President.— He has answered it.

Mr. Brackett.— He said solely for that reason. That is all.

By Mr. Herrick:

Q. Now, I will ask you, have you anything to add to solely for that reason? A. Yes.

Q. What? A. I know a great deal more about political donations than the average man.

Mr. Brackett.— I object to the question, What.

The President.— You asked him for the reason.

Mr. Brackett.— It is to the form of the question, what.

Mr. Herrick.— Counsel cut him off.

The Witness.— I have been acting treasurer of the Democratic National Committee, and I have been treasurer of individuals.

Mr. Brackett.— I don't know what to expect from a question of that kind, it leaves the whole field for the witness to go over.

Mr. Herrick.— I want to be liberal in that respect. He was cut right off. He wanted to add something to his answer.

The President.—The question that was put by Senator Brackett was, Was that the only reason. To that he answered yes. He could say whether it was the only reason. If there were other reasons or not, he answered yes.

By the President:

Q. Do you want to give another reason? A. There was another reason.

By Mr. Herrick:

Q. Was there any other reason besides his being candidate for Governor that actuated you in making this contribution and soliciting contribution? A. Because he was put to extra expense.

Mr. Brackett.— Now, I object to the question on the ground that that calls for his concededly undisclosed intention and reason and for the operation of his mind.

The President.— But the point is, you ask if this was the sole reason?

Mr. Brackett.—Yes.

The President.— Which you had a right to do, and that is for the purpose of impairing his statement and it was for him personally. That are not obliged to rest on that. They can ask if there was another reason.

Mr. Brackett.— The witness has said there were some expenses, I believe, extra expenses.

By Mr. Herrick:

Q. What extra expenses did you understand he would be put to?

The President.— I think you have gone far enough.

Mr. Herrick.—Very well, sir, I submit.

The President.—That is all, witness.

Mr. Kresel.— Now, Mr. Croker.

The Clerk.— Mr. Croker, you do solemnly swear that the evidence which you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer, as Governor of this State, shall be the truth, the whole truth and nothing but the truth, so help you God?

The Witness.— I do.

RICHARD CROKER, JR., a witness called in behalf of the Managers, having been first duly sworn, in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Stanchfield:

Q. Mr. Croker, where do you reside? A. New York City.

Q. What is your occupation? A. I am in the real estate business.

Q. You are in the real estate business? A. Yes, sir.

Q. Do you know the respondent, Governor Sulzer? A. I do.

Q. You have known him for quite some years? A. For a great many years, yes, sir.

Q. Did you see him shortly after his nomination for Governor in the fall of 1912? A. I did.

Q. Can you give us the date, the day; you handed him a check on that date, did you not? A. No, I did not, not the first time I saw him.

Q. Did you give him a check at all? A. I did.

Q. Have you it with you? A. I have.

Q. Will you produce it. A. (producing check.)

Mr. Stanchfield.—The check which you handed me is dated October 16, 1912.

Q. Did you see him on that date? A. Yes, on the 16th.

Q. On that date where did you see him? A. At his office.

Q. Where was his office at that time? A. I don't remember but I think it was in what is known as the Empire Building in Broadway, New York City.

Q. Do you recollect whether or not you saw him on that occasion after banking hours? A. It was after banking hours, that is, on the 16th day of October.

Q. That is the date that you gave him this check, isn't it? A. Yes.

Q. You never gave him a check on any other occasion during that campaign? A. No.

Q. Nor any money? A. No.

Q. So we will confine ourselves to this one occasion. That was while he was in the midst of his active campaign for election? A. Yes.

Q. Now, did you have any talk with him at the time when you gave him this check, upon the subject of his wanting cash? A. I did.

Q. I notice, Mr. Croker, that this check is made out payable to the order of cash. That is right, isn't it? A. Yes.

Q. Why did you make it out payable to the order of cash? What was said between you and Mr. Sulzer at that time, in other words, that led you to make it out payable to the order of cash? A. I think the reason was because Mr. Sulzer said that he was about to leave for a trip through the State, either that night, or starting early the next day.

Q. And what? That he would like it in cash? Was that what? A. That was the reason I made it out cash.

Q. Did he tell you in that conversation over what portion of the State, that trip, that contemplated trip, was to extend? A. Not that I remember.

Q. It was one of his regular campaign trips up the State? A. I really don't know.

Q. Do you mean to say he was about to start the next day on a trip up the State, and you didn't know what trip it was or what it was about? A. I don't recall at the present time.

Q. Was anything more said than what you have now testified to? A. Yes.

Q. On the subject of his trip or wanting cash? A. Not on either one of those subjects, that I remember.

Q. About what time on this date did you hand him this check? A. I think about four or five o'clock in the afternoon.

Q. I hand you that check for a moment. Will you look at the back of it. What endorsement, if any, is on the back of it? A. There is the name F. L. Colwell on the back.

Q. F. L. Colwell. Was he in the room when you and Mr. Sulzer were together on this date? A. No.

Q. Do you know Mr. Colwell? A. No.

Q. Did you ever see him in your life? A. No, not that I remember.

Q. Do you know, Mr. Croker, as a matter of fact, that that check was not cashed until the 31st of October? A. I don't.

Q. Will you look at the check and see if it doesn't show you upon its face the day when it was cashed? A. It is stamped "Paid 10/31/12."

Q. That would mean October 31st, would it not? A. (No response.)

Q. That would mean October 31st, would it not? A. I really don't know.

Q. You mean to say you don't know what those figures "10/31/12" on that check mean? A. I have got an idea, but I am not sure.

Q. What is your idea? A. I think it is the date.

Q. The date what? A. Of the month.

The President.— Is there any question that is the tenth month and thirty-first day?

Mr. Stanchfield.— There is not in my mind. I want the witness to do the testimony.

Mr. Herrick.— The check testifies for itself pretty well.

Mr. Stanchfield.— So does Judge Herrick.

Mr. Stanchfield.— I will read this check. You can mark it afterwards.

"No. 213. New York, *October* 16, 1912.

THE EQUITABLE TRUST COMPANY OF NEW YORK.

Pay to the order of Cash
Two thousand dollars.

Richard Croker, Jr."

With the endorsement: "F. L. Colwell" upon the back, and the stamp "Paid," as before noted, on the 31st of October, 1912.

(The check offered in evidence was received and marked Exhibit M-68.)

Mr. Stanchfield.— You may cross examine.

Cross examination by Mr. Herrick:

Q. Mr. Croker, you say that you have been acquainted with Governor Sulzer for a number of years? A. Yes.

Q. He was an old acquaintance and friend of your father's, I believe? A. Yes.

Q. Were you also conversant with his reputed financial condition? A. I don't quite understand the question.

Q. I said, his reputed financial condition, Sulzer's? A. (No answer.)

Q. I will put it in another form. Was it your understanding from the speech of people, or from Sulzer himself, that he was impecunious?

Mr. Stanchfield.— Wait a minute, Mr. Croker. I object to that in that form.

The President.— It is really, what was his belief. Had you any belief on the subject of his financial condition?

Mr. Herrick.— Very well. I accept that. I didn't suppose that would be permitted.

The President.— Does that meet your objection?

Mr. Stanchfield.— It is all right. I shall take no time with it.

By the President:

Q. Had you any belief as to his pecuniary condition, no matter how you got it? A. Yes, I had.

Q. You had at the time? A. Yes, I had at the time.

By Mr. Herrick:

Q. Now, what was that belief? A. I felt that he depended absolutely upon the salary that he received from the public office that he was holding at the time.

Q. Did you believe that he had any resources except from the salary? A. No.

The President.— He said exclusively the salary.

Q. Now, you were asked if you had a conversation with him prior to the time that you gave him this check? A. I had a great many.

Q. No, but the one previous to giving him the check? A. Oh, yes.

Q. State that conversation, please? A. And where it took place?

Q. Yes. A. It was at his office, I believe, either one or two days before this October 16th.

Q. Well? A. During the conversation that I had with him, which, oh, included a number of topics, this matter of expense came up, and I made the remark to him that I supposed he was under a very heavy personal expense at that time, and would be for some time to come; he said that was so. I then said to him that I would like to help him to the extent of giving this — of giving $2,000 toward covering his personal expense.

Q. Well, now, what did you say to him when you gave him the check subsequently, if anything. The very last thing I said to him before leaving his office on that afternoon of October 16th, was in substance that I wished he would consider the giving of this money a personal and confidential matter.

Mr. Herrick.— That is all.

Re-direct examination by Mr. Stanchfield:

Q. Now, when you were talking with him on the first occasion, and you say he told you he was under heavy personal expense, what heavy personal expense did he tell you he was under? A. He didn't say.

Q. Are you quite sure about that? A. Quite sure.

Q. You have signed a statement, haven't you, about this matter? A. I don't think so; not that I remember.

Q. Haven't you been down to the office of the Board of Managers in New York? A. I have.

Q. And haven't you signed a statement? A. I have.

Q. Well, then, you do remember that you have signed a statement? A. Not to the effect that you mentioned.

Q. I am not asking you to what effect. I asked you if you signed a statement? A. I beg your pardon. You referred to a particular thing in that statement.

Q. You misunderstood me. Did you sign, Mr. Croker, a statement there? A. I signed a statement.

Q. Now, didn't you talk over with Mr. Sulzer at all the nature of the expenses that he was under? A. I did not.

Q. Did you have any talk with him at that time about this campaign book that he was getting up, or that was being printed? A. I don't remember that I did.

Q. Did you ever see that campaign book? A. Yes.

Q. What was it called? A. I don't remember; I think it consisted of speeches by William Sulzer.

Q. Didn't you see that at his office? A. No, I don't think so.

Q. And was the subject of the expense incident to the publication of that book the topic or theme of the discussion between you at that time? A. It might — no, that matter was not discussed.

Q. Well, was it at any time, at either of the interviews, the expense incident to the publication of that book, being heavy? A. Not that I remember.

Q. Well, how sure do you want to be about that now, that you didn't talk at all with him on the subject of his expense incident to the publication of that campaign book? A. No more so than I say that I don't recall it.

Q. You don't recall it? A. No.

Q. You can't recall that any expenses, that is, their nature or their character, were talked about between you? A. Not that I recall.

Q. But you did talk about the fact that he was under heavy expense? A. Exactly.

Q. And that expense was as a candidate for Governor, wasn't it? A. No.

Q. For what? A. Probably occasioned by the fact that he was a candidate for Governor.

Q. Very well, I will take it that way, occasioned by the fact that he was a candidate for Govenor, and when you say occasioned by the fact that he was a candidate for Governor, you had in mind, with your political ancestry behind you, that running for office is an expensive luxury, didn't you? A. Yes.

The President.— Now, witness, turn around again, and look at the furthest Senator, and speak to him.

Mr. Brackett.— The last question was an affirmative one.

The President.— Read the question and answer, stenographer, to the Court.

(The stenographer thereupon read the question and answer as follows. "Q. Very well, I will take it that way, occasioned by the fact that he was a candidate for Governor. And when you say occasioned by the fact that he was a candidate for Governor, you had in mind, with your political ancestry behind you, that running for office is an expensive luxury, didn't you? A. Yes.")

Q. You knew, Mr. Croker, as a candidate for Governor, that he would be required to make campaign speeches all over the State during the campaign? A. Yes.

Q. And that he would be compelled to carry along with him stenographers and reporters, and men for one purpose and another on those expeditions? A. I knew he would have to do that, yes, sir.

Q. Now, when you went to see him, you were his friend, that is right, isn't it? A. Yes.

Q. You had in mind that he would have to incur all these expenses? A. Yes.

Q. And you wanted to help relieve him of the burden incident to those expenses? A. Not to those particular expenses.

Q. Well, any expenses in connection with the campaign? A. Any personal expenses in connection with the campaign or in connection with anything.

Q. Any personal expenses in connection with the campaign or anything. What do you mean when you say — when you use the word "anything"? A. Well, I mean anything that would occasion expense.

Q. In connection with the campaign or outside of it? (No response.)

Q. In connection with the campaign or outside of it? A. Do you want me to give you what I had in mind at that time?

Q. I want you to answer that question. A. I am trying to

get it so I can answer it. If you won't be quite so quick with me I will try to give you the exact answer.

Q. Excuse me. I don't want to be quick with you. If I asked a question too rapidly I will withdraw it. You said you meant to contribute money to him in connection with the campaign or for any other expenses, as I get your answer, is that right?

Mr. Brackett.—Any other thing.

Q. Any other thing? A. Yes, I said that was it.

Q. I mean to treat your answer fairly. If not, you can speak for yourself. A. When I mentioned that about you wanting me to give you it quickly, it is very hard to give a complete answer at all times.

Q. Well, take your time. I haven't the slightest desire to debar you of it. When you used the expression for any other expenses or any other thing, what did you have in mind aside from campaign expenses. That is the meaning of my question. A. I had nothing particular in mind in regard to that; whatever expenses might come up.

Q. All that you did have in mind when you understood from him on this day that he wanted cash, that he was about to take a trip up the State, was expenses connected with the campaign? A. Not necessarily so.

Q. What else did you have in mind in the way of expenses? A. As I said a little while ago, whatever expenses might come up.

Q. What expenses did you have in mind? A. I didn't have any particular expenses in mind.

Q. None at all? A. No.

Q. You did have in mind the expenses incidental to the campaign? A. I thought that might be one source of expense.

Q. One source of expense? A. Exactly.

Q. When you went with this check for $2,000 he was then, you say running for office? A. He was.

Q. Would you have taken that check to him then if he had not been a candidate for office? A. I don't think that is a fair question.

Q. You answer whether it is or not.

The President.—You cannot direct the witness to answer. The Court will tell the witness whether he shall answer.

Mr. Stanchfield.— I meant if the other side did not object.

The President.— Now, witness, answer the question.

Mr. Herrick.— May the question be repeated?

The President.— Repeat the question, Mr. Stenographer.

(The question was read by the stenographer as follows:) "Would you have taken that check to him then if he had not been a candidate for office?"

The Witness.— It is impossible for me to say at this time.

Q. Why is it impossible for you to say? A. Because I cannot imagine the conditions which might exist under which I might have given him a check under other circumstances.

Q. He was then in good health, wasn't he? A. I really don't know whether he was or not.

The President.—You can pass that.

Mr. Stanchfield.—That is all, Mr. Croker.

Mr. Herrick.— One moment.

Mr. Stanchfield.— I will ask you one question.

Q. Since these impeachment proceedings were instituted, have you had any telephonic communication with Governor Sulzer? A. None.

Q. Have you seen him personally? A. I haven't.

Mr. Stanchfield.— That is all.

Mr. Herrick.— That is all.

Judge Bartlett.—I should like to ask the witness a question, please.

The President.— Would you speak out louder so the Senators back of you can hear?

Judge Bartlett.—I will do the best I can.

By Judge Bartlett:

Q. Mr. Croker, at whose instance, if anyone's, did you make this check payable to cash? A. I cannot tell positively but I think it was at Mr. Sulzer's suggestion.

Q. Do you remember what he said to you on that subject? A. You mean the subject as to whose order the check was to be made?

Q. Yes. A. I think after I had made the offer to give this money, I asked him how the check was to be made out. I think it came up that way.

Q. What did he say? A. I can give you the substance of what he said then.

The President.— That is sufficient.

Q. That will suffice. A. Which I think was that, owing to the fact it was after banking hours that day that he intended to leave either that night or early the next morning he would like to have that check made out to the order of cash.

Q. Did he explain how that would facilitate him at that hour in getting money? A. As I recall it now nothing further was said about that.

Mr. Judge Bartlett.— That is all.

Senator Murtaugh.— Mr. President.

The President.— Senator Murtaugh.

By Senator Murtaugh:

Q. Mr. Croker, did you go to Mr. Sulzer's office at his invitation? A. I did not catch that.

Q. Did you go to Mr. Sulzer's office at Mr. Sulzer's invitation? A. No, I didn't.

Senator Thompson.— Mr. President.

The President.— Senator Thompson.

Senator Thompson.— May I ask a question?

The President.— Proceed.

By Senator Thompson:

Q. Mr. Witness, if you remember, how did you happen to go to Mr. Sulzer's office; what was the occasion of your visit. A. You mean of that particular date?

Q. Yes. A. I don't recall now. I made many visits to his office.

Q. You wouldn't like to give the reason as to why you went? A. I don't recall the reason now.

By Mr. Stanchfield:

Q. Well, Mr. Croker, this check was one of your checks taken from your check book? A. Yes.

Q. You hadn't filled it out when you went over to his office? A. No.

Q. Did you fill it out in his office? A. I think it was in his office it was filled out, yes.

Mr. Stanchfield.— That is all.

Mr. Kresel.— Mr. Houghton.

The Clerk.— You do solemnly swear that the evidence which you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer, as Governor of this State shall be the truth, the whole truth, and nothing but the truth, so help you God?

The Witness.— I do.

The Clerk.— What is your full name, please?

The Witness.— William P. Houghton.

WILLIAM P. HOUGHTON, a witness called in behalf of the Managers, being first duly sworn in accordance with the foregoing oath, testified as follows:

DIRECT EXAMINATION.

By Mr. Kresel:

Q. Are you in the employ of the Equitable Trust Company of New York? A. Yes; the Colonial branch.

The President.— One moment. No one can hear you.

The Witness.— I am in the Colonial branch.

The President.— Look at the furthest Senator.

Q. That is, you are attached to the Colonial branch of the Equitable Trust Company? A. Yes, sir.

Q. And its office is where? A. 222 Broadway.

Q. In the city of New York? A. Yes, sir.

Q. Do you know Frederick L. Colwell? A. I do.

Q. On the 31st of October, 1912, what position did you occupy in the Colonial branch of the Equitable Trust Company? A. Paying teller.

Q. Paying teller. Did you on that day see Frederick L. Colwell? A. I did.

Q. Where? A. In front of my window,

Q. Did he present a check to you? A. He did.

Q. Did you see him write his name on the back of that check? A. I did not.

Q. Now I show you Exhibit M-68 and ask you whether that is the check he presented to you in the Equitable Trust Company? A. That is.

Q. When he presented the check to you, what did he say? A. Merely asked for the cash.

Q. He asked for the cash for this check, and did you give him anything? A. I did.

Q. What did you give him? A. Currency.

Q. How much? A. $2,000.

Q. Do you recall in what denominations you gave it to him? A. No, sir.

Q. Then he left the check with you? A. He did.

Q. Is that correct? A. Yes.

Q. How long had you known Mr. Colwell? A. Might have been 15 or 17 years.

Q. What had been your acquaintance with him? A. He lived in the block opposite to where I lived and I had been a member of his Sunday school class once.

Q. Now, the stamp on this check, the perforation on the check, what do the figures 10/31/12 stand for? A. The day the check was paid.

The President.— That is the 10th month, 31st day?

The Witness.— On October 31st, 1912.

Q. That was the date you gave cash for it to Mr. Colwell? A. That is correct.

Mr. Kresel.— That is all.

Mr. Herrick.— Is that the Croker check?

Mr. Kresel.— That is the Croker check.

Mr. Herrick.— That is all.

Mr. Kresel.— That is all.

(Witness excused).

Mr. Kresel.— We are so near the hour of adjournment, shall I call another witness?

The President.— Gentlemen, it will be necessary to meet a few minutes later on Monday than the time prescribed by the rules, as the regular term of the Court of Appeals is announced for that day, and it will be necessary for the Court to meet there and adjourn.

So, the adjournment now, instead of being to 2 o'clock Monday will be 2:15 on Monday.

The Crier.— All witnesses are excused until Monday afternoon at 2 o'clock and 15 minutes.

The President.— Adjourn court.

The Crier.— Hear ye, hear ye, hear ye, all persons having any further business before this Court of Impeachment held in and for the State of New York may depart hence and appear here next Monday afternoon at 2 o'clock and 15 minutes, to which time this Court now stands adjourned.

Whereupon at 3:27 P. M. the Court adjourned to meet again on Monday, September 29, 1913, at 2:15 P. M.

SENATE CHAMBER,

ALBANY, N. Y., *September* 29, 1913.

Pursuant to adjournment the Court convened at 2:15 o'clock P. M.

PRESENT:

Hon. EDGAR M. CULLEN, Presiding Judge,
and
THE JUDGES OF THE COURT OF APPEALS,
and
THE SENATORS OF THE STATE OF NEW YORK.

APPEARANCES:

THE MANAGERS:

Same as heretofore.

Counsel for the Managers:

Same as heretofore.

Counsel for the Respondent:

Same as heretofore.

The President.— Call the roll.

The Clerk thereupon called the roll and found that there was a quorum present with the following absentees:

Judge Collin.
Senator Fitzgerald.
Senator Foley.
Judge Gray.
Senator Healey.
Senator Hewitt.
Senator Thomas.

The President.— Crier, open Court.

The Crier.— Hear ye, hear ye, hear ye, all persons having business before this Court of Impeachment held in and for the State of New York, give their attendance, and they will be heard.

The President.— Now, gentlemen.

Mr. Herrick.— Mr. President, last week counsel for the Managers propounded certain questions to us relative to Mr. Colwell, as to his whereabouts, and as to whether he would be produced, in substance. One of the counsel for the respondent has finally located Mr. Colwell and had an interview with him. He is within a sanitarium and without the jurisdiction of this Court. He is under the impression that a warrant has been issued for his arrest because of his not testifying before the so-called Frawley Committee. He assures counsel for the respondent that he will come here to testify, provided he is guaranteed he will not be arrested or molested. Counsel for the respondent believe his statement. If the counsel for the Managers will give us assurance to that effect, we believe that we can rely upon him and bring him here, or have him come here. And if he is here we guarantee to place him upon the stand as a witness.

Mr. Kresel.— May it please the Court, in order —

Mr. Hinman.— May I be permitted, Mr. Kresel —

The President.— Now —

Mr. Hinman.— May I inquire, if your Honor please, if Mr. Kresel was going to make a statement in reply to Judge Herrick.

Mr. Kresel.— No, no, not at present.

Mr. Brackett.— May the Court please, I would like to make an inquiry. I think this matter is a subject of consultation between counsel for the Managers.

Mr. Hinman.— That is all right.

Mr. Brackett.— But, with a view of having full information I would like to inquire if the statement of counsel for the respondent includes the proposition that the witness Colwell, or the person Colwell in case the assurance is given that is asked for from the Managers, if he will be in Court so he may be subpoenaed if desired, and called on behalf of the Managers.

Mr. Herrick.— We can give no assurance as to the day he will be here. We can give no assurance unless Mr. Colwell is assured that he will not be placed under arrest.

After the interview that has been had with him, we are more confident then ever that we need him as a witness, and if we can get him within this State we will place him upon the stand.

The President.— Is there any answer to be made?

Mr. Brackett.— Not at present.

Mr. Hinman.— If it please the Court, you will remember that Mr. Brady has been a witness in this proceeding.

The President.— Yes.

Mr. Hinman.— If you will turn to page 731 of the printed record you will note that when Mr. Brady was being examined by Mr. Stanchfield he was asked if in the fall of 1912 he made a contribution to candidate Sulzer after his nomination for Governor, and that he answered he did.

He was then asked if he handed a check to candidate Sulzer or someone else to deliver to him, and the witness answered "I gave the check to Judge Conlon."

Then he was asked if he didn't see Governor Sulzer in person, and he answered "I did. I spent the entire evening, almost, with Governor Sulzer."

He was then asked whether it was that same evening that he gave the check to Judge Conlon and he stated it was. I want a concession, if the counsel are willing to make it, that that check was handed by Mr. Brady to Judge Conlon at about eleven o'clock on election night, after the election had closed; and if the counsel will refer to the testimony taken before the board of managers in New York when Mr. Brady was examined, they will find that he so testified. If that concession can be made, it will obviate the necessity of asking the recall of Mr. Brady in order to examine him concerning that.

Mr. Kresel.— Will you leave that for the present so that I may refer to the testimony?

Mr. Hinman.—Yes.

Mr. Kresel.— May it please the court: For the purpose of completing the record with regard to the Luchow contribution,

I want to offer in evidence the letter received by Mr. Luchow. We omitted that the last time.

(Letter offered in evidence, received and marked Exhibit M-69.)

Mr. Kresel.— This letter reads as follows:

"115 Broadway, New York,
"*November* 8, 1912.

"AUGUST LUCHOW, Esq., 14th Street near Fourth Avenue, New York City:

"My Dear Mr. Luchow.— Many thanks for your congratulations and good wishes. I certainly appreciate all you say and all you did for me. With best wishes, believe me as ever,

"Sincerely your friend,
"WM. SULZER."

Mr. Kresel.— Now we will call Mr. Sorenson.

The Clerk.— You do solemnly swear that the evidence which you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer, as Governor of this State, shall be the truth, the whole truth and nothing but the truth, so help you God.

The Witness.— I do.

The Clerk.— What is your full name?

The Witness.— John S. Sorenson.

JOHN S. SORENSON, a witness called in behalf of the Managers, having been first duly sworn, in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Kresel:

Q. Mr. Sorenson, what is your business? A. Coffee importer and general exporter.

Q. That is fine. Just a little louder, and then we can all hear you. A. Coffee importer and general exporter.

Q. And with what firm are you connected? A. Crossman & Sielcken.

Q. What is the business of Crossman & Sielcken? A. Coffee importers and general exporters.

Q. Where is their place of business? A. No. 90 Wall street.

Q. Who were the members of that firm on the 9th of October, 1912? A. George W. Crossman and Herman Sielcken.

Q. Where is Mr. Sielcken now? A. He is in Germany.

Q. And has Mr. Crossman died since the 9th of October, 1912? A. He has.

Q. Now, do you know Governor Sulzer? A. I do.

Q. Did you go to see candidate Sulzer on or about the 9th of October, 1912? A. I did.

Q. And where did you go to see him? A. At his office in Broadway.

Q. Do you remember the number? A. 115.

Q. New York city? A. New York city.

Q. When you went there what did you have with you? A. I had $2,500 in currency.

Q. In bills? A. In bills.

Q. Where had you obtained that money? A. I had drawn it from one of our banks.

Q. Did anybody instruct you to draw that money? A. Mr. Crossman did.

Q. That is the gentleman who has since died? A. Yes, sir.

Q. What did Mr. Crossman tell you to do with the money? A. He told me —

Mr. Herrick (interrupting).— That is objected to.

The President.— You may answer.

The Witness.— He told me to go to Mr. Sulzer and hand in the money.

Q. And prior to giving to him this money what had Mr. Crossman said to you about getting it? A. He had told me to — he told me to draw $2,500 in cash and bring it to him.

Q. And did you draw $2,500 at your bank? A. I did, sir.

Q. Did you draw a check for that purpose? A. I did, sir.

Q. Now, I show you this paper and ask you whether that is the check? (Counsel passes paper to witness.) A. (After examining.) That is the check, sir.

Mr. Kresel.— I offer the check in evidence.

Mr. Marshall.— Let us see it.

(Paper is passed to counsel.)

(The check offered in evidence was received and marked Exhibit M-70.)

Mr. Kresel.— We have no photograph of this check because it was just produced today. It has the name of Crossman and Sielcken printed on it. It is "No. 103,082. New York, October 9, 1912. The National City Bank, pay to the order of ourselves. Then in parenthesis disbursement account $2,500, Crossman & Sielcken, J. A. Sorenson."

Q. Is that the name? A. Yes.

Mr. Kresel.— Then it is indorsed Crossman & Sielcken, J. A. Sorenson, and underneath that the indorsement Joseph Schultz.

Q. Who is Joseph Schultz? A. The boy who drew the money.

Q. From your office? A. From our office.

Q. When you went down to 115 Broadway, did you see candidate Sulzer? A. I did, sir.

Q. What did you say to him? A. I told him I was sent by Mr. George W. Crossman "To hand you this."

Q. And how did you carry the money? Was it in an envelope or open, or how? A. Just in my hand, without any envelope.

Q. Your hand, and in what denomination was this sum of $2,500? A. Twenty-five $100 bills.

Q. Did you count it as you handed it to him? A. No, sir.

Q. Did you tell him how much you were handing him? A. No, sir.

Q. Have you, as far as you can now recall, stated everything you said to Mr. Sulzer at that time? A. I have.

Q. What did he say? A. "Thank Mr. Crossman for me."

Q. Is that all, as far as you recall? A. That is all.

Q. When did Mr. Crossman die? A. January 15, 1913.

Q. And where? A. New York city.

Q. And how long has Mr. Sielcken been abroad? A. He left here on the 10th of June, this year.

Q. And do you know how long he will remain abroad? A. I don't.

Mr. Kresel.— That is all.

Mr. Herrick.— That is all.

Mr. Kresel.— I will call Judge O'Dwyer.

The Clerk.— You do solemnly swear that the evidence which you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer, as Governor of this State shall be the truth, the whole truth and nothing but the truth, so help you God?

The Witness.— I do.

The Clerk.— What is your full name?

The Witness.— Edward F. O'Dwyer.

EDWARD F. O'DWYER, a witness called in behalf of the Managers, having been first duly sworn, in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Kresel:

Q. Judge O'Dwyer, you are a judge of the city court in the city of New York? A. I am.

Q. In the month of October, 1912, were you acquainted with William Sulzer, who was then a candidate for Governor? A. I was.

Q. How long had you known him? A. Over twenty years.

Q. Judge, did you give Candidate Sulzer, in the month of October, 1912, any money or check? A. I did.

Q. Was it money or a check? A. Check.

Q. Have you the cancelled check which was subsequently returned to you by your bank? A. I have.

Q. Will you please produce it? A. Yes.

Q. This check, Judge, is dated the 10th of October, 1912. Was

that the day when you gave this check? A. To the best of my recollection it was.

Q. To whom did you give it? A. I left it for Mr. Sulzer at the Manhattan Club.

Q. With whom did you leave it at the Manhattan Club? A. I enclosed it in an envelope addressed to him, and left it there with the doorman or the clerk at the desk, with a request that they hand it to him when he came in. I had been in the club house expecting he would be in there that evening, and I could hand it to him personally, but as he did not come in, I left it at the club house with a request that it be handed to him.

Q. This check is drawn on a blank form. Is it a fact that you obtained this form at the Manhattan Club? A. That is a form found at the Manhattan Club. It is not one of my regular checks.

Q. And you drew that check right at the Manhattan Club? A. I did.

Q. Did you leave any letter with this check for Candidate Sulzer? A. I did not.

Q. Prior to leaving this check at the Manhattan Club had you had any talk with Mr. Sulzer about giving him a check? A. I did not.

Q. Since leaving the check at the Manhattan Club have you received any acknowledgment of the receipt of it? A. I have not.

Q. Did you, after leaving this check at the Manhattan Club, have any talk with Mr. Sulzer over the telephone or otherwise? A. I had no talk with Mr. Sulzer after leaving that check, over the telephone. Subsequently, during the campaign, I think I may have met him and wished him good luck or a passing word of that kind, but I recall no conversation had with him, with Mr. Sulzer.

Q. With regard to the check? A. With regard to the check or any other subject.

Mr. Kresel.— I offer the check in evidence.

(The check offered in evidence was received and marked Exhibit M-71.)

Mr. Kresel:

"NEW YORK, *October* 10, 1912.

"THE SEABOARD NATIONAL BANK,

"Pay to the order of William Sulzer, One hundred dollars.

"EDWARD F. O'DWYER."

Certified October 16, 1912. Indorsed "William Sulzer, Pay to the order of Manhattan Company, New York, Boyer, Griswold & Company," and then a stamp "Manhattan Company, Received payment October 16, 1912."

That is all.

Mr. Herrick.— A single question.

Cross examination by Mr. Herrick:

Q. Judge, had you contributed or did you thereafter contribute to the Democratic Committee? A. I had.

Mr. Kresel.— That is all. I will call Mr. O'Brien.

The Clerk.— Mr. O'Brien, you do solemnly swear that the evidence which you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer, as Governor of the State, shall be the truth, the whole truth, and nothing but the truth, so help you God?

The Witness.— I do.

The Clerk.— What is your full name?

The Witness.— John F. O'Brien.

JOHN F. O'BRIEN, a witness called in behalf of the Managers having been first duly sworn, in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Kresel:

Q. Mr. O'Brien, what is your business? A. I am in the milk business, milk products and by-products.

Q. Where is your place of business? A. My main office is in the Hanover Bank Building, in the city of New York.

Q. Prior to going into your present business, Mr. O'Brien, did you hold any public office in the city of New York? A. No, sir.

Q. Do you know the Governor, William Sulzer? A. Yes, sir.

Q. And when he was a candidate for Governor last October, did you know him then? A. Yes, sir.

Q. By the way, do you live in the city of New York, Mr. O'Brien? A. I do. My voting residence is there. My summer residence is on Long Island.

Q. And how long have you known Governor Sulzer? A. Probably eight or ten years.

Q. Are you a member of the National Democratic Club? A. I am.

Q. In the city of New York? A. Yes, sir.

Q. Now, while William Sulzer was a candidate for Governor did you send him a contribution? A. I did, yes, sir.

Q. Look at exhibit 39 (Counsel passes paper to witness). Is that the check which you sent him? A. Yes, sir (after examining).

Q. Did you send it by mail, Mr. O'Brien? A. I did, yes, sir.

Q. And did you enclose a letter? A. I did, yes, sir.

Q. Have you a copy of that letter? A. No, I have not.

Q. Was it written in pen and ink? A. It was, yes, sir.

Q. And you kept no copy? A. No, sir.

Mr. Kresel.— Will the gentlemen please produce the letter?

Mr. Marshall.— We have none.

Q. Will you state, Mr. O'Brien, the substance of what you wrote in that letter? A. Why, as near as I can recall, I said, I enclose herewith a check for $50, my contribution — my check for $50 as a contribution. I regret I can't make it more. I don't think I said anything further than that. I believe I did say that I hoped that two years hence when you come up for re-election that I will be in a position to contribute again, or something of that kind.

Q. Well, subsequently did you receive an acknowledgment of that contribution? A. I did.

Q. Have you that letter? A. No, I have not. I thought I did have it until I made a search for it in my office, and yesterday I searched at home and I can't find it.

Q. Well, do you recall the substance of what the letter stated? A. As near as I can recall, it was something to this effect: I thank you for your great kindness and for all you have done for me. With best wishes. It was very brief.

Mr. Kresel. — That is all.

Mr. Herrick.— That is all.

Mr. Hinman.— Just a word. Was that check offered in evidence or only marked for identification?

Mr. Kresel.— No, it is in evidence. Do you want to see it?

Cross-examination by Mr. Hinman:

Q. If I may ask the witness if he recalls whether the endorsements on that check as they appear now appeared when the check was returned? A. I didn't see that check from the time I signed it until I sent it to Mr. Kresel a couple of weeks ago.

Mr. Kresel.— I am reminded that the check had not been read. It is dated New York city, November 2, 1912. Drawn on the Franklin Trust Company. Pay to the order of William Sulzer $50. Signed John F. O'Brien, endorsed with a stamp — that is what the gentlemen want to bring out — William Sulzer, and underneath that L. A. Sarecky, deposited in the Mutual Alliance Trust Company.

Now, has Mr. Fuller arrived?

The Clerk.— You do solemnly swear that the evidence which you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer, as Governor of this State, shall be the truth, the whole truth and nothing but the truth, so help you God?

Mr. Fuller.— I do.

The Clerk.— What is your full name, please?

Mr. Fuller.— Arthur L. Fuller.

ARTHUR L. FULLER, a witness called on behalf of the Managers, having been first duly sworn, in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Kresel:

Q. Mr. Fuller, are you a member of the firm of Fuller & Gray? A. I am.

Q. And the business of that firm is that of bankers and brokers? A. The business of that firm is stockbrokers.

Q. Stockbrokers. And where is your office? A. 71 Broadway.

Q. Have you any branch offices? A. Yes.

Q. Where are the branch offices located? A. One in Brooklyn, one in Yonkers, one at 501 Fifth avenue, New York city.

Q. When was the business of Fuller & Gray started? A. June 1, 1911.

Q. Prior to that time—

Mr. Kresel.—I withdraw that—

Q. What is the full name of Mr. Gray, your partner? A. John Boyd Gray.

Q. Prior to associating yourself in business with him what was Mr. Gray's business? A. He was manager of an office in Yonkers.

Q. Speak a little louder. A. He was manager of an office in Yonkers.

Q. And was that a branch office of the firm of Harris & Fuller? A. It was.

Q. What is the full name of the Mr. Fuller who is a member of the firm of Harris & Fuller? A. Melville B.

Q. And are you and Mr. Melville B. Fuller related? A. We are.

Q. And what is the relationship? A. Brothers.

Q. Now, when you and Mr. Gray entered into this partnership did your firm take over the branch office of Harris & Fuller in Yonkers? A. We did.

Q. And that now constitutes your Yonkers office? A. It does.

Q. Now, is that same thing true with regard to the Brooklyn office? A. Yes.

Q. That is, the firm of Fuller & Gray took over the Brooklyn office of the firm of Harris & Fuller? A. Yes.

Q. Now, you say that you also have an office at 501 Fifth avenue? A. Yes.

Q. Did you likewise take that office over from Harris & Fuller? A. No.

Q. You took that office over from Boyer, Griswold & Company? A. Yes.

Q. Now, in the month of October, 1912, did your firm have in its employ a Mr. Sutton? A. October, 1912?

Q. Yes. A. Yes, I believe they did.

Q. And what is Mr. Sutton's full name? A. Effingham is all I know.

Q. Effingham Sutton? A. Yes, sir.

Q. Do you know, Mr. Fuller, whether Mr. Sutton was related to your partner, Mr. Gray? A. I believe he was.

Q. A brother-in-law? A. I believe so.

Q. That is, Mr. Gray married Mr. Sutton's sister? A. I believe that is it.

Q. You know that to be a fact, don't you? A. I have heard that. I suppose it is correct.

Q. And in October, 1912, in which of your offices was Mr. Sutton employed? A. The Brooklyn office.

Q. During that month did your firm also have in its employ a man named Coe? A. Yes, sir.

Q. What is his first name? A. Frederick, I think.

Q. Frederick Coe? A. Yes, sir.

Q. And in which of your branch offices was Mr. Coe located during the month of October, 1912? A. In the Yonkers office.

Q. Now, Mr. Fuller, you were subpoenaed to produce certain books of the concern of Fuller & Gray; have you them here? A. I have.

Q. Will you produce the ledger, please? A. They are out in the ante-room, I think. Mr. Coe is there.

Mr. Kresel.— Mr. Coe, will you produce them?

Mr. Hinman.— Have you a transcript?

The Witness.— I have a transcript in my pocket.

Mr. Kresel.— I have a transcript, but I want to see the original.

Mr. Hinman.—All right.

Q. Is the book which you now have before you the ledger kept by the firm of Fuller & Gray? A. Pardon me, I did not catch the question.

Mr. Kresel.— The stenographer will read it.

The question was read by the stenographer as follows: "Is the book which you now have before you the ledger kept by the firm of Fuller & Gray?"

The Witness.—Yes.

Q. Now, will you turn in that ledger to an account known by the number "500?" A. Yes, sir.

Q. Have you it there? A. Yes.

Q. What folio of the ledger is that? A. 246. This is it here (indicating).

Q. Now, please look at this paper which I now hand you, and state whether that is a correct transcript of the account 500, as it appears in your ledger?

Mr. Hinman.—Any objection, Mr. Kresel, to my looking at this?

Mr. Kresel.— Not at all.

A. It is, as far as I can see.

Q. It is a correct transcript, is it not, with the exception that the word "transferred" which appears on the original, does not appear on the transcript? A. I do not see any "transferred" on the original.

Q. Just look lower down the page? A. That has nothing to do with the account. It is transferred from this into our future ledger, probably.

Q. I didn't inquire whether it had anything to do with it? A. The transcript has not the word "Transferred" in it.

Q. Exactly. The word "Transferred" which appears on the original does not appear on the transcript? A. It does not, no, sir.

Q. With that single exception, it is a correct transcript, is that right? A. Yes, sir.

Q. When was that account No. 500 opened? A. October 21, 1912.

Q. Before we go any further will you tell us this, is it a fact that the date of a transaction as it appears in your ledger, is the date when you either receive or deliver the stock which you either sold or purchased; is that correct? A. That is correct.

Q. In other words, if you buy 100 shares of stock for a customer of yours to-day, which is the 29th of September, it will be entered in your ledger under date of the 30th of September, because it will not be until to-morrow that you get the stock. Is that correct? A. That is correct.

Q. Now, you say the first entry in that account is under date of October 21, 1912? A. Yes, sir.

Q. Just read that entry, will you? A. October 21st, 100 CCC, 60, 1250.

Q. The meaning of which is that on the 21st of October you bought for this account 100 shares of stock known as CCC. Is that right, at a certain figure? A. We received 100 shares of stock at that figure.

Q. You received it. When did you buy it? A. The previous date.

Q. October 20th? A. October 20th.

Q. 1912? A. 1912.

Q. You received it on the 21st? A. According to our book we received it on the 21st.

Q. Well, has he been there throughout all of last week, do you know? A. I don't know. I have not seen him in some time.

Q. When was the last time that you saw him? A. It is probably two weeks or more ago.

Q. During the last two weeks have you been at your New York office? A. Occasionally.

Q. And you have had no communication with your partner although you have been in the same city for the past two weeks? A. Oh yes, I have.

Q. Now, of course you could communicate with Mr. Gray over the telephone if you so wished? A. Surely.

Q. Do you know anything about the opening of this account No. 500? A. No, sir, I do not.

Q. Mr. Gray does, doesn't he? A. He does. I am the floor man of the firm, and therefore I am not familiar with the office end of it particularly.

Q. Did you at any time have any talk with any person who had anything to do with that account No. 500? A. I asked my partner if we were to carry this stock on margin; he said no, we were not; it was to be paid for.

Mr. Herrick.— That is objected to.

Mr. Hinman.— Never mind. He said they were not.

Q. Did you ask your partner whose account No. 500 was? A. I do not recollect that I did.

Q. Did he ever tell you? A. No, sir, he did not.

Q. So that as you sit there now — A. (Interposing) I withdraw that; yes, he has told me. I did ask at a later date who it was for and he told me.

Q. And when was it that you asked him? A. After I testified before the Frawley Committee.

Q. You testified in the month of August last, didn't you? A. I believe it was, yes.

Q. Well, who did he say was —

Mr. Herrick.— That is objected to.

The President.— Objection sustained.

Q. Now then, go through the account, Mr. Fuller. When was the first time that you received any money for account No. 500? A. We had a credit on October 22, 1912, of $1,500.

Q. How was it paid? A. There is nothing that shows here.

Q. What is the entry there. How does it read? A. Oh, yes, "Cash."

Q. Then it was a cash payment to your firm of $1,500 was it? A. Yes, sir.

The President.— Are you going to subpœna Mr. Gray?

Mr. Kresel.— In answer to your Honor's question I want to say we have been trying to get Mr. Gray for ten days and we

have been unable to locate him, and I am going to make use of this gentleman's good offices to get in touch with him and get him here.

The President.— Of course he can explain much better than this witness on the stand can as to these entries.

By the President:

Q. In fact, you really do not know anything about it except as you know the stock business and the custom as to how these entries are made? A. That is correct.

Mr. Kresel.— I offer in evidence, if your Honor please, the transcript instead of offering the original account.

The President.—Any objection?

Mr. Herrick.— No.

The President.— It will be admitted.

(Transcript offered in evidence admitted and marked Exhibit M-72.)

By Mr. Herrick:

Q. You have another copy of it here, haven't you? A. Yes, sir.

Q. The paper that you hand me is also a transcript? A. Yes, sir.

By Mr. Kresel:

Q. Now, Mr. Fuller, will you follow me with the original. I want to ask you three questions about this. Is it a fact that the account shows that on the 21st of October you bought for that account 100 Big Four?

Mr. Herrick.— We object to that. It is simply wasting time, it seems to me.

Mr. Kresel.— I do not want to waste time but I want it made plain; I do not want to have to be explaining it.

Mr. Herrick.— The exhibit shows for itself.

By the President:

Q. I suppose you use initials, don't you, something of the sort? A. Yes, sir.

The President.— So you have got to explain to the ordinary lay mind what those initials mean.

Q. On the 21st of October, 1912, you bought for this account 100 C. C. C. at 60. Now, C. C. C. stands for what stock? A. Cleveland, Cincinnati, Chicago & St. Louis.

Q. Otherwise known as the Big Four? A. Yes.

Q. On the 22d of October you bought another 100 shares of that same stock, did you not? A. Yes.

Q. On the credit side on the 22d of October there was paid to the account — there were two payments on that date, one of $1,500 and one of $1,000, both in cash, is that correct? A. Yes.

Q. On the 28th of October there is a payment of $500 in cash? A. Yes.

Q. On the 31st of October there was a payment of $8,825 in cash? A. Yes.

Q. And is it a fact that the account shows that on that date the two shares of C. C. C. thus bought were delivered? A. Yes, sir.

Q. To the customer? A. Yes, sir.

By the President:

Q. That paid it up; that last payment paid up for the stock in full? A. I don't know; I would have to calculate that.

By Mr. Kresel:

Q. It paid it all but $14.74 accrued interest, isn't that correct? A. Yes, that is correct.

Q. On the 4th of November, 1912, the account shows that an additional 100 shares of this same stock was bought, is that correct? A. Yes.

Q. According to the account, Mr. Fuller, on that date did you have any margin with which to buy this stock? A. According to the account, no, sir.

Q. The payment for that stock was made on the 6th of November, wasn't it? A. According to the account the stock was delivered on the 6th of November.

Q. And paid for at that time? A. There is an item here of figures. I suppose — it does not say that it is paid for; it says delivered.

Q. The amount of $5,512.50 is credited to that account on that day? A. Correct.

Q. Isn't that right? A. Yes, sir.

Q. Then the only other transaction in the account was the sale on the 25th of November of one $1,000 bond of the St. Louis & Southwestern road, is that right? A. Yes, sir.

Q. And was paid for by your firm on the same day? A. Yes, sir.

Q. Have you produced the check book of the account of Fuller & Gray showing the deposit of these various sums of money? A. I have.

Mr. Kresel.— Will you produce that, Mr. Coe?

Q. Mr. Fuller, this account was closed on the 30th of November, 1912, was it not? A. It shows a debit balance on that date, but the account is still open.

Q. There have been no further transactions in the account since November 25th? A. No, sir.

Q. Is that correct? A. Yes, sir.

By the President:

Q. Is there open in it this interest balance that you spoke of? A. A debit balance for interest.

Q. That is the only item? A. Yes, sir.

Q. And that is still due you? A. Yes, sir.

By Mr. Brackett:

Q. But there have been no transactions since that time? A. No, sir.

By Mr. Kresel:

Q. Now, please look at your checkbook, showing the deposits for October 22, 1912. (Counsel passes book to witness.) Can

you find the entry there of a deposit of $1,000 in cash for account 500? A. (After examining book) Yes, sir.

Q. And a deposit of $1,500 in cash for account 500? A. On October 22, none there on October 22. (Witness examines book.) No, sir, there is no such item on that date.

Q. Is there another book? A. Yes, sir, we have several books here.

Q. Oh, well then, look at — A. (Interrupting) If you will let me have the books, I prefer to find them, if you please, if they are in there.

Mr. Brackett.— Showing you checkbook of the Yonkers National Bank; that is, a checkbook of Yonkers on that bank.

(Counsel passes book to witness.)

Q. Do you find the entry of the deposit of $1,500 in cash for account 500? A. Yes, sir.

Q. From the fact that that is entered in the Yonkers bankbook, does it indicate that the payment was made in Yonkers? A. I don't know.

Q. So that now we have it that both payments of October 22 were in cash, were they not? A. Question, please.

The President.— Mr. Kresel, what do you mean by "cash," currency as distinguished from —

Mr. Kresel.—(Interrupting) Check.

The President.—(Continuing) From check?

Mr. Kresel.— Exactly.

The Witness.— Is that what the counsel means?

Mr. Kresel.—We are waiting for the stenographer to read the question.

Mr. Hinman.— I am inquiring whether — Mr. Kresel answered the Court's question. I am wondering whether the witness agrees in that statement.

(The stenographer read the question asked to be repeated as follows: "So that now we have it that both payments of October 22 were in cash, were they not?)

The Witness.— They were.

Q. And when you speak of cash you mean currency as distinguished from check? A. Yes sir.

Q. Now, the $1,500 in cash was deposited in the Yonkers bank. In what bank was the $1,000 deposited? A. The Home Trust Company of Brooklyn.

Q. And you had at that time a branch office in Brooklyn, did you not? A. We did.

By the President:

Q. You mean to say this, don't you, witness: Were those check books in your New York office, or was the Yonkers bank check book in the Yonkers office, and the other one in the Brooklyn office? A. They were all in the Brooklyn office.

Q. Both the Yonkers and the — A. All our check books in the Brooklyn office at that time, because it was our main office.

Q. Did you receive any money from any person to the credit of that account on the 21st of October, 1912? A. No sir.

Q. Did you receive any money to the credit of that account from anybody on the 20th of October, 1912? A. No sir.

Q. So that on the 20th of October, 1912, when you bought that 100 shares of stock, you had received no money from anybody with which to buy it. Is that correct? A. Yes sir.

Q. In common Wall street parlance, you had no margin for that at all, did you? A. No sir.

Q. Nor did you have any on the 21st of October, when you actually received the stock? A. No sir.

Q. You were, at that time, a member of the firm, weren't you? A. Yes sir.

Q. What was your particular part in the firm? Were you the inside man or the floor man? A. I am the floor man of the firm.

Q. That is, you represent your firm on the floor of the Stock Exchange? A. Yes sir.

Q. And was Mr. J. B. Gray the office man? A. Yes sir.

Q. Where is Mr. J. B. Gray? A. I beg pardon?

Q. Where is Mr. J. B. Gray? A. I suppose he is in our office in New York.

Q. Now, on October 28th. Please look at your deposits and state whether you find a deposit there of $500 in cash to the credit of this account? A. Yes sir.

Q. And was that currency? A. Yes sir.

Q. And in what bank was that deposited? A. Home Trust Company.

Q. Brooklyn? A. Yes, sir.

Q. Now look at your deposits of October 31st, and state whether you find there a deposit for account 500?

Mr. Brackett.— This book, sir. (Handing book to witness.)

Q. Look at the book which is now being handed you? A. I have deposits on October 31st. Yes sir.

Q. How much? A. $8,825.

Q. $8,825. Was that in currency? A. Yes sir.

Q. That was for account 500? A. Yes sir.

Q. So that between the 22nd and 31st of October, 1912, all the payments for account 500 were in cash; that is, currency, and they aggregate $11,825. Is that correct? A. I don't know the amount they foot up. I have not footed them up. They were all cash.

Q. Well, look at the transcript.

The President.— Is that the time when he says the stock was all paid for except the interest item of $14 and odd cents?

Mr. Kresel.— Yes, your Honor, that is the date.

Q. Well, isn't that near enough?

The Witness.— On October 31st, they amount to $11,839.74.

Q. Payments? A. Yes.

Q. And the $14.34 was not paid? A. No, that is right, less the $14.74.

Q. That is $11,825? A. Yes sir.

The President.— Can't you ask him the direct question whether the stock was not all paid for in currency except the interest item, which is still unpaid?

The Witness.— Yes, your Honor, that is correct. It was.

Q. Then the last 100 shares of Big Four which was bought for account 500 was also paid for in currency, wasn't it? A. It was.

Q. On November 6th? A. Yes.

Q. And that was how much A. $5,512.50.

Q. So, is it a fact, that the total payments into account 500, between the 22nd of October, 1912, and the 6th of November, 1912, were $17,337.50, all in currency. A. Yes, sir.

The President.— Is that all?

Mr. Kresel.— That is all.

The President.—Anything further?

Cross-examination by Mr. Hinman:

Q. You have testified, as I understand it, and I am asking you to see if my understanding is correct, that this entry of stock on this Exhibit M-72, in the books of Fuller & Gray of 100 shares of the Big Four stock had been purchased by your concern and received by it the day before, the day before the 21st? A. Well, according to our books, I am not familiar enough with books to tell you exactly when it did come in, or when it was purchased.

Q. You say according to the books that appears. What is there on your books that makes that appear, that is, makes it appear the stock was bought or came in the day before the 21st of October, namely, October 20th? A. There is not anything makes it appear it came in. It came in on the date on that transcript. That is the date we received it.

Q. What is there on your books which indicates that 100 shares of stock was bought by your concern or ordered on the day before, October 20th?

The President.— He has told you that according to the ordinary custom of the Stock Exchange, stock bought one day is delivered and paid for the next, unless bought for cash.

Mr. Hinman.— He has testified that according to the books it appears it was bought by them the day before. I want to see what there is on the books which indicates that?

The Witness.— We have a purchase and sales book which keeps a record of that.

Q. Have you that book here? A. Yes, sir.

Q. Will you look on that book and see if there is anything there which indicates this stock was bought on October 20th? A. This book shows 100 shares of stock bought on the 21st of October.

Q. Then were you in error when you stated that according to the books of Fuller & Gray that stock appeared to have been purchased on the 20th of October? A. Yes, sir, evidently so.

Q. That must be so? A. That must be so.

Q. Because October 20th was on a Sunday? A. Yes, sir.

Q. Let me see if I understand correctly. Do you recall now of having had anything to do personally in connection with these transactions which appear on this Exhibit M-72? A. Nothing whatever, no, sir. You mean as far as the bookkeeping is concerned?

Q. Yes. A. No, sir. None whatever.

Q. You have stated, in answer to Mr. Kresel's question, that in the account as it appears in your ledger, fol. 246, the word "transferred" is written. Is that in connection with this account, or the manner in which it was handled on the books? A. Why, I really cannot say. I imagine it has something to do with the way it is handled on the books, the transfer of it.

Q. And nothing further than that it was transferred from one book to the other? A. I imagine that is what it means. I cannot say.

Q. Did you keep personally this account as it appears in the books, or make any of the entries in connection therewith? A. No, sir.

Q. I wish you would look at Exhibit M-72, which is a transcript of this account, and shows the fact that the payments of cash under date of October 22d, 28th and 31st, appear to have been cash, and then asked you whether or not there is any entry on that exhibit which indicates or shows that the 100 shares of Big Four stock entered on one side of the account, under date of November 4th, and on the other side of the account under date of

November 6th, indicated, as I say, whether there was any cash paid for that last entry? A. Why, it indicates that it was delivered.

Q. Yes. A. It indicates it was delivered for an amount against it of $5,512.50.

Q. The items of cash under dates of October 22d, 28th and 31st, appear as credits of cash? A. Yes, sir.

Q. And there is no such credit of cash under date of November 6th? A. No, sir.

Q. And that entry of November 6th relates, does it not, that other 100 shares of Big Four stock which you say was purchased on the 4th? A. Yes, sir.

Q. Do you know why, if cash was paid for that 100 shares of Big Four stock, the entry of which appears under date of October 4th, it does not so appear in the account? A. I do not, no, sir.

Q. Do the entries indicate that that was handled in a different way than the other, that is, by the others, I mean transactions of October 21st, 22d and 31st? A. Why, it is different in the fact that the word "Cash" is not there.

Q. Not only is the word "Cash" not there, but there is something else there? A. The word "Delivered," or the abbreviation for delivered.

Q. And there is more than that difference. Now, as I —and I am not very familiar with keeping accounts, which is the reason I ask you,— on the credit side of this Exhibit M-72, appears under date of October 31st, an entry, 200 C. C. C. & St. L., delivered. Under date of November 6th, on the same side of the account appears the entry 100 C. C. C. & St. L. delivered, but there is nothing there that indicates whether it was cash or not. With the transactions of October 22d, 28th and 31st, it appears that it was cash. Can you explain why that difference is made in keeping the account, that is, from the books, I mean? A. No, sir, I cannot.

Q. And you can't state what the fact is outside the books because you had no personal knowledge of the transaction? A. No, sir.

The President.— Is that all?

Mr. Hinman.— Just one other thing, I think.

Q. Have you any objection to my looking at this book for one moment? A. No, sir.

(Witness passes book to counsel.)

Mr. Hinman.— If the Court will pardon me just a moment.

(Counsel examines book.)

Q. In this folio which you have and regarding which you have been testifying regarding this account 500 on folio 246, let me ask you if there are other accounts in the same book that bear numbers only? A. Yes, sir.

Q. And many of them? A. Yes, sir; it is quite customary.

Q. And is that customary in the brokerage business in New York? A. Quite so; yes, sir.

Mr. Hinman.— Nothing further.

Mr. Kresel.— One minute, Mr. Fuller.

Redirect examination by Mr. Kresel:

Q. Whether your ledger shows that the item on November 6th was cash or not, your check book shows that it was cash? A. Our books speak for themselves.

Q. Well, now, I am asking you isn't it a fact that the check book shows that the payment on November 6th for account 500 was in currency? Now, look at it again? A. (Witness examines book.) Cash 500, yes, sir; cash, No. 500 account.

Q. Cash for No. 500 account, and the amount $5,512.50? A. Yes, sir.

Q. Now, you have stated that there are other accounts in your ledger which are carried under numbers? Have you an index there showing the name of the person whose account is carried under a particular number? A. (Witness examines book.) Indexed, but it doesn't give the name, no, sir; it gives the number but not the name.

Q. Well, now, look under No. 500. Is there any name given? A. (After examining.) No, sir.

Q. Have you any record in your office to indicate to whom account No. 500 belonged? A. Why, I couldn't say that we have that I know of; not that I know of.

Q. Well, take any other account carried by any other number. Can you tell us whether there is any record in your firm to indicate to whom that number belongs? A. Why, an account of this sort, I should say no.

Q. Well, what do you mean by an account of this sort?

By the President:

Q. Witness, how do you know, if you have several accounts, whose, in reality, they are? Do you keep a memorandum for that purpose? A. No, sir.

Q. Well, then, how do you carry it? A. If we carry an account on margin, of course, we know who it is; but where it is what we call a cash account and the account is closed on one or two or perhaps three transactions, why we don't need to keep any further record of it; but if we have open active accounts of course we know who they are; that is, I suppose the office must know who they are for; I don't delve in that part of the business as long as I am fully satisfied that the business is all right and properly conducted.

Q. You buy and sell on the floor of the Exchange? A. I do, yes, sir.

Q. According to the orders that come to you from the office? A. Exactly, yes, sir.

By Mr. Kresel:

Q. This account No. 500 was an account on margin, wasn't it?

The President.— If we are going to get the witnesses that are actually conversant with that branch of the business, hadn't you better wait until they get on the stand, so that we can get the evidence directly?

The Witness.— I should say no.

Mr. Kresel.— May I follow that up a minute with this witness, seeing that he has answered?

The President.— Oh, yes. The Court merely suggests that it might save time, if you have other witnesses who are conversant with it they may tell directly what they know.

Q. Mr. Fuller, you say that this account No. 500 was not a margin account. On the 23rd of October is it a fact that you were carrying 200 shares of Big Four for that account? A. Yes, sir.

Q. And is it a fact that the only payments you had received for that account were $2,500? A. Yes, sir.

Q. And is it a fact that the stock had cost $11,800 to purchase? A. Yes, sir.

Q. And isn't that a margin account? A. I should say no because it was understood that this stock was to be paid for outright at the time they bought it.

Mr. Kresel.— That is all.

Senator Blauvelt.— Mr. President.

The President.— Senator Blauvelt.

By Senator Blauvelt:

Q. I would like to ask the witness if he knows who 500 account belongs to — or who was the customer — A. (Interrupting) Yes, sir, I do.

Q. (Continuing) — operating under the account 500? A. Yes.

The President.— He says yes, Senator.

Q. I would like to ask the witness the question then, who that account — in whose name — or who was the customer against whom you carried that account?

Mr. Herrick.— That is objected to upon the ground that it already appears that he was told by his partner only in August after the investigation before the Frawley Committee.

The President.— You can ask him again: Did you know except from what your partner told you in August, whose the account was?

The Witness.— No, sir, I did not.

Q. Do you know now, of your own knowledge? A. From my partner, through my partner? Yes, sir.

Q. Of your own knowledge do you know who that account is from any source? A. I don't know from my own knowledge. I know I have been told by my partner.

The President.— I think that answers it. That is all, witness.

By Mr. Kresel:

Q. Mr. Fuller, may I trouble you to say to Mr. Gray that the Managers are anxious to have him appear here as a witness? A. I shall be very glad to do so.

Q. Will you do that? A. I surely will, yes, sir.

Senator Walters.— May I ask the witness to whom this stock was delivered that was purchased?

Mr. Kresel.— May I state to the Senator that I shall bring that out with the next witness. This witness has no personal knowledge. Mr. Sutton.

The Clerk.— Mr. Sutton, you do solemnly swear that the evidence which you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer, as Governor of this State, shall be the truth, the whole truth and nothing but the truth, so help you God?

The Witness.— I do.

The Clerk.— What is your full name?

The Witness.— Effingham E. Sutton.

Effingham E. Sutton, a witness called in behalf of the Managers, having been first duly sworn, in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Kresel:

Q. Mr. Sutton, in October, 1912, were you employed in the Brooklyn office of the firm of Fuller & Gray? A. I was.

Q. Are you a brother-in-law to Mr. J. B. Gray? A. Yes, sir.

Q. Who is a member of that firm? A. I am.

Q. Beginning with the 21st of October, 1912, did your firm have an account on its books known as No. 500? A. Yes.

Q. Whose account was that, Mr. Sutton? A. William Sulzer.

Mr. Herrick.— Wait a minute. I move to strike out the answer.

The President.— He has not answered the question.

Mr. Herrick.—Yes, your Honor; he said "William Sulzer."

The President.— Due to my defect of hearing I did not hear it; it will be stricken out until you find out what his knowledge is on the subject.

Q. On the 31st of October, 1912, did you see Mr. Coe? A. I did.

Q. Did you telephone for him? A. No, I did not.

Q. He was at that time in the Yonkers branch, wasn't he? A. I believe so.

Q. He did come over to the Brooklyn office? A. He did.

Q. Where you were on that day? A. Yes.

Q. Did you give Mr. Coe anything on that day; did you give him any stock? A. I don't know that I gave it to him.

The President.— Witness, you must try to speak louder. It is difficult for me to hear you even here.

Q. The question is whether you gave Mr. Coe on that day some stock? A. I did not give it to him myself, no.

Q. I mean, were you at the head of that Brooklyn office at that time? A. No.

Q. Who was? A. Mr. Clark.

Q. Did you receive a receipt from Mr. Coe on that day? A. I did.

Q. Whether you personally handed him the stock or somebody else did, was it done in your presence? A. It was.

Q. Now, what stock was handed to Mr. Coe? A. 200 shares of Big Four.

Q. 200 shares Big Four? A. Yes.

Q. Did you give to Mr. Coe at that time instructions what to do with that stock? A. No, I did not.

Q. Did Mr. Whatever the name of the man is — what is his name? A. Mr. Clark.

Q. Did Mr. Clark? A. No, I do not believe so.

Q. You don't believe he gave him any instructions? A. No.

Q. Did Mr. Coe give you or Mr. Clark any moneys or checks at that time when he received the stock? A. Not to me or Mr. Clark.

Q. Prior to the stock being handed over to Mr. Coe had you received a telephonic communication from Mr. Gray? A. I had.

Q. And what were the instructions that he gave you? A. To be prepared to deliver 200 shares of Big Four by quarter after three.

Q. And what did you do then? A. There was a messenger sent over to the New York office and the stock was brought back from the New York office to the Brooklyn office.

Q. In other words, Mr. Gray, from New York telephoned to you in Brooklyn to be prepared to deliver 200 shares of Big Four at a quarter past three? A. Yes, sir.

Q. Thereupon you sent a messenger to New York who brought the stock back to Brooklyn? A. Yes.

Q. And was that the stock which was handed in Brooklyn to Coe? A. It was.

Q. Coe coming from Yonkers? A. I don't know whether he came from Yonkers.

Q. He was at that time attached to the Yonkers office? A. Yes.

Q. But on this particular transaction he came to Brooklyn? A. He did.

Mr. Hinman.— Permit me, the witness I think in answering the last question either misunderstood Mr. Kresel or Mr. Kresel misunderstood the witness. The question infers that Mr. Coe came from Yonkers to Brooklyn for the purpose of taking part in this transaction.

The President.— No, he said he did not know even if he came to Yonkers. He said he was attached to the Yonkers office. The

last question was in a little different form — it is simply to ask another question, I think.

Q. Mr. Coe came to the Brooklyn office, is that right? A. He did.

Q. Mr. Coe on that day was regularly attached to the Yonkers office? A. He was.

By the President:

Q. That is all you know about where he came from? A. Yes.

By Mr. Kresel:

Q. Now, Mr. Sutton, will you state how you know whose account this 500 was; I think that is the only way I can put it.

The President.— What are the sources of your knowledge? A. The only source of my knowledge is what has been told me.

Q. By whom? A. Mr. Gray.

Mr. Kresel.—That is all.

Mr. Hinman.— One moment.

Cross-examination by Mr. Hinman:

Q. On this October 31, 1912, you say Mr. Coe was at the Brooklyn office? A. Yes, sir.

Q. Was he there frequently? A. Not that I remember, no.

Q. Did you ever see him there before? A. Probably once or twice.

Q. And you have seen him there since? A. I have.

Q. What communication anyone else had had with Mr. Coe before he was there on the 31st you don't know?

The President.— How could he know.

Mr. Hinman.— Not unless it was in his presence. I withdraw it.

By Mr. Kresel:

Q. What did you have to do with giving the number 500 to that account? A. Well, at Mr. Gray's home we discussed —

Q. Listen. The members in the court at the back of the room want to hear what you say. Won't you please speak up? A. It was at Mr. Gray's home and we were discussing a new account that was going to be opened, and there had been several accounts opened with numbers and he wanted a number and I suggested 500.

Q. And was it in connection with that that you learned from Mr. Gray who the person was whose account was to be known by the number 500? A. It was.

Q. Now, I ask you to state whose account No. 500 was?

Mr. Herrick.—That is objected to; it is hearsay.

The President.—You can get Mr. Gray here and have him testify; that is the better way.

By Mr. Hinman:

Q. What part did you have to do with the bookkeeping? A. I was on the purchase and sales.

Q. You were a bookkeeper and keeping the books? A. Yes, assisting.

Q. Were you in charge of it or an assistant? A. I was in charge of portions of the books.

Q. What portions of the books did you have charge of in October, 1912? A. Purchase and sales.

Q. Are these accounts kept in one book or more than one? A. More than one.

Q. What particular book or books in that department did you keep, the purchase and sales department? A. There is just the purchase and sales book.

Q. Was there more than one book being kept at the time in that department? A. Yes.

Q. How many? A. There were several.

Q. Which one or ones did you keep, or did you keep them all? A. Just purchase and sales.

Q. I am speaking now of the book or books in which the account, the purchase and sales accounts were kept.

The President.— What the counsel wants to know is whether you kept several concurrently or only one after the other, as one was used up. A. As one was used up we would use another.

Q. So you only had one at a time? A. One at a time, yes, sir.

Q. Then, in that department in October, 1912, the purchase and sales department, only one book was kept during any one period? A. Yes.

Q. More than one? A. Yes, but not by me.

Q. Which one did you keep? A. Only the purchase and sales.

Q. Take the purchase and sales, did all the purchase and sales—

The President.— You are playing at cross purposes. The witness does not understand.

By the President:

Q. Witness, did you have more than one at a time of purchase and sales books? A. No, I did not.

Q. For instance, on the 21st of January was there only one book that the entry of purchases or sales would be entered in? A. Yes.

By Mr. Hinman:

Q. There was more than one book?

The President.— No, he says there was not but one.

Q. Let me ask you again: On the 31st day of October, 1912, was there more than one book kept in the office of Fuller & Gray of purchases and sales or in connection with the purchases and sales? A. There were.

Q. How many books were being kept on the 31st of October, 1912, in relation to that? A. There were several.

Q. What were they? A. The blotter and the ledger.

Q. Any more? A. Purchase and sales also.

Q. Describe this purchase and sales book; you have got the blotter and now take the purchase and sales book, what were they? A. The purchase and sales book was the day an order was executed it would be entered in the purchase and sales book and

then transferred to the blotter and from the blotter transferred to the ledger.

Q. Were any other books used in connection with this purchase and sales account at the time? A. No.

Q. Which one of those books did you keep?

The President.— He says half a dozen times that he kept the purchase and sales book. Of course their business was that of stock brokers and purchases and sales went through all their books.

By the President:

Q. Was there one book that went by the name of purchase and sales book? A. Yes, sir.

Q. Was that the book you kept? A. Yes, sir.

The President.— Now I think we have got it. You are taking up a great deal of time on it.

Mr. Hinman.— If I may be permitted he stated there was only one kept, in answer to your Honor's question.

The President.— That was because he did not understand your question.

Mr. Hinman.— I want to get it correct. It may be I am to blame for it.

The President.— Proceed.

By Mr. Hinman:

Q. In which book was the original entry made? A. Purchase and sales.

Q. And that was the book which you kept? A. Yes.

Q. Did anyone else there keep that book in October, 1912, except yourself? A. If I did not happen to be at the office Mr. Ehrich would take care of it, the cashier.

Q. And when you were at the office did you always do that work or was it sometimes done by others? A. Most always I did it, sometimes by others.

Q. And what others besides yourself would keep that book?

The President.— Is there going to be a question raised as to these purchases? A. Mr. Ehrich.

Q. Did you make the original entry in this purchase and sales book on October 31st, 1912? Was that the first entry made in connection with this account 500? A. I do not exactly remember whether I entered it or not.

The President.— Show it to him.

Mr. Hinman.— I am testing his recollection. He has testified here as to what Mr. Gray told him.

The President.— No, that was excluded.

Mr. Hinman.— It stands on the record here that this witness has testified that Mr. Gray did tell him something which was that Mr. Gray told him whose account it was and I want to get at that.

The President.— Then you may open the door for the other side.

Mr. Hinman.— I shall not inquire what he told him but I want to fix the date.

By Mr. Hinman:

Q. Have you any recollection outside of the books as to any time you made any entries in connection with that account?

The President.— I shall rule that out.

Q. May I inquire when Mr. Gray gave you the information as to whose name the account was in? A. I believe it was in the latter part of November.

Q. What year? A. 1912.

Mr. Kresel.— May I now ask the witness what the conversation was?

The President.— No.

Mr. Brackett.— May I ask a question?

The President.— Yes.

Mr. Brackett.— Isn't it part of the res gestae to make declarations of Gray to this man competent as indicating —

The President.— I think not, Mr. Brackett.

Senator Healy.— May I ask a question?

The President.— Yes.

Senator Healy.— Will you please indicate whose account you believe 500 to be?

Mr. Herrick.— That is objected to.

The President.— It is not his belief. It is the legal proof. That is not evidence that is competent.

Senator Emerson.— Can he tell us who does know?

The President.— He says the other partner, Mr. Gray, knows.

Mr. Kresel.— Our difficulty is we cannot get Mr. Gray.

The President.— You shall have the opportunity.

Mr. Brackett.— We shall need more than an opportunity to get him. We have been trying to.

The President.— I think now you will have an opportunity which you can avail yourselves of and which will be successful.

Mr. Kresel.— Mr. Coe.

The Clerk.— Mr. Coe, you do solemnly swear that the evidence which you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer as Governor of this State, shall be the truth, the whole truth and nothing but the truth, so help you God.

The Witness.— I do.

The Clerk.— What is your full name?

The Witness.— Frederick A. Coe.

FREDERICK A. COE, a witness called in behalf of the Managers, having been first duly sworn in accordance with the foregoing oath testified as follows:

Direct examination by Mr. Kresel:

Q. In the month of October, 1912, were you employed with the firm of Fuller & Gray at their Yonkers office? A. I was.

Q. And did you have charge of that office? A. No, sir.

Q. Who did? A. Mr. Hart, the manager.

Q. Wasn't he the manager of the Brooklyn office? A. Mr. Clark was the manager of the Brooklyn office.

Q. Mr. Clark was the manager of the Brooklyn office? A. Yes.

Q. What was your position in the Yonkers office? A. It is hard to define. I did anything that came up; telephoned orders on the direct wire; answered the phone; made deposits; anything that came along in the course of the day; Mr. Hart and I just interchanged; the one that was handiest to the customer did the business.

Q. Do you remember, Mr. Coe, whether you were at the Yonkers office on the 31st of October, 1912? A. I was.

Q. You were there all day, were you not? A. On what day?

Q. The 31st of October, 1912, I am talking about? A. No.

Q. You made a trip to Brooklyn? A. I made a trip to Brooklyn.

Q. But up to the time that you left Yonkers to go to Brooklyn you had been there all of that day? A. I left Yonkers about noon.

Q. You had been there all the forenoon? A. Yes.

Q. Now, who instructed you to go to Brooklyn? A. Why, it came on the phone. Either Mr. Gray or Mr. Colwell; some one in the Brooklyn office; I don't know whom.

Q. Either Mr. Gray or Mr. Colwell? A. Yes.

Q. You mean Frederick L. Colwell? A. Yes, I do.

Q. Was Mr. Frederick L. Colwell at that time connected with your firm? A. He was not; he was a customer.

Q. Is it your recollection now that it was Mr. Colwell that telephoned you to come to Brooklyn? A. I hardly know; I think it was Mr. Gray or Mr. Colwell. I don't remember.

Q. You have no distinct recollection now as to which one it was? A. I do not.

Q. But you went to Brooklyn? A. I did.

Q. What were your instructions to do there? A. To get 200 shares of Big Four stock, deliver it to Mr. Colwell at the Nassau Bank, and receive the money for it.

Mr. Kresel.— Did all the Court hear that?

Members of the Court.— No.

Mr. Kresel.— May we have that read?

Senator Bussey.— Mr. President, it is impossible to hear the witness better.

The President.— Now, Mr. Stenographer read.

The stenographer read the question as follows: "To get 200 shares of Big Four stock, deliver it to Mr. Colwell at the Nassau Bank and receive the money for it."

By Mr. Kresel:

Q. Well, now, then, Mr. Coe, from the fact that the message was that you were to get 200 shares of Big Four and deliver it to Mr. Colwell, does that in any way refresh your recollection as to whether it was Mr. Gray that sent you that message or whether it was Mr. Colwell? A. It was — I don't remember which.

The President.— I think you have got that.

Q. Now, you went to the Brooklyn office, did you, and did you get 200 shares of Big Four? A. I did.

Q. Did you give a receipt for it? A. I did.

Q. Have you.— A. I did not at the time, no; not until I came back to the office.

Q. You did not, but you took the stock? A. No.

Q. Who gave you the stock? A. I think Mr. Ehrich, the book-keeper.

Q. How many certificates were there? A. Two.

Q. Two hundred shares? and each certificate of 100 shares? A. Yes, sir.

Q. Do you remember to whom they were made out? A. I do not.

Q. And when you got the 200 shares of stock, did you give any money for it? A. I did not.

The President.— No, he says his instructions were to take the stock and deliver to whom? Someone at the Nassau Bank?

The Witness.— Mr. Colwell, yes, sir.

The President.— And get the money from him?

Q. What did you do with the stock, Mr. Coe? A. I took it around the corner to the Nassau Bank, and met Mr. Colwell there and gave it to him.

Q. Did he give you the money? A. He did.

By the President:

Q. Did he give you the money? A. He did.

Q. In what, checks or currency? A. In currency, $8,825.

Q. What was that, the Nassau Bank of Brooklyn? A. The Nassau Bank of Brooklyn.

Q. Around Court street? A. Court street.

By Mr. Kresel:

Q. How far from the office of Fuller & Gray in Brooklyn, was the Nassau Bank located? A. Oh, just around the corner.

Q. Just around the corner? A. Yes, sir.

Mr. Brackett.— How many feet or yards?

Q. Can you tell the distance between the office of Fuller & Gray in Brooklyn and the Nassau Bank? A. I am not very well acquainted in Brooklyn; I very seldom go there, but I think it was on the — towards the Subway, towards the City Hall, one block on the corner, I think.

Q. What was the number in Brooklyn of the office of Fuller & Gray? A. 200 Montague street.

The President.— Is it worth while to go into this detail?

The Witness.— 200 Montague street.

Mr. Kresel.—Yes, if your Honor please, we think that is important. However, I shan't pursue it any further. We have gone far enough now.

Q. Was there any reason given why you should be brought from Yonkers to Brooklyn to deliver this stock to a man a block away from the very office where you got it from? A. Well, yes.

Q. What was it? A. Mr. Colwell at one time was a partner of Harris & Fuller, and I understood he did not care to know — for them to know that he had an account with Fuller & Gray and the young men at the Brooklyn office every day were in contact every day with the office of Harris & Fuller, whereas I was not.

Q. Now, after getting the new account of $8,825 in cash what did you do with it? A. I took it back to 200 Montague street.

Q. And to whom did you deliver it? A. To Mr. Ehrich.

Q. Did you get a receipt from Mr. Colwell for this stock? A. Not that day.

Q. When did you get a receipt? A. I think the next day he came into the office in Yonkers, and I had him sign a receipt for me.

Q. Have you that receipt? A. I have not.

Q. What has become of it? A. The receipt was put in an envelope with some other papers, and was put in Mr. Gray's desk; when he cleared out his desk in February, preparatory to taking most of his effects to New York, a great many things were destroyed; some were put carefully away in Yonkers, so carefully I have not been able to find them; some were taken to New York, and up to this time I have not been able to find that receipt.

Q. Have you the receipt that you gave to the Brooklyn office for the stock?

The President.— That appears.

Mr. Kresel.— I want to see if the numbers of the certificates are there. May I have that?

(Mr. Fuller produces paper.)

Mr. Kresel.— Yes, the numbers are there.

Q. Is this the receipt (counsel passes paper to witness). A. (After examining.) Yes.

Mr. Kresel.— I offer that in evidence.

Mr. Hinman.— Just let me look at it, Mr. Kresel.

(Counsel passes paper to Mr. Hinman.)

Mr. Hinman.— Thank you. (After examining.) Well, do you want it marked?

Mr. Kresel.— Yes, please.

(The paper offered in evidence was received and marked Exhibit M-73.)

Mr. Hinman.— Will you read that.

Mr. Kresel.— This receipt has the imprint "Fuller & Gray."

"No. 538 Brooklyn, N. Y., Oct. 31st, 1912.
Received from Fuller & Gray One hundred shares CCC". Certificate No. C25824; 100 shares CCC Certificate No. C24602. Is that correct, Mr. Coe, that last number?

The Witness.— Well, I don't — C25824.

Q. No, the second one? A. Oh, here — I think it is. I did not make out the receipt.
Q. 24602? A. I did not make out the receipt.
Q. Now, Mr. Coe —

Mr. Herrick.— Who is it signed by?

Mr. Kresel.— Signed Frederick A. Coe.

Q. Prior to this 31st of October, 1912, had you ever before delivered any stock from Mr. Colwell? A. I had not.
Q. And subsequent to this time did you deliver any more stock to Mr. Colwell? A. Yes, once.
Q. When was that? A. Sixth of November.
Q. Sixth of November, 1912? A. 1912, yes.
Q. Tell us about that delivery? A. Well —
Q. How did you come to do it, what time did you do it? A. The same thing. I was telephoned to come down to Brooklyn

and deliver 100 shares of Big Four, at the Home Trust Company this time.

Q. This time at the Home Trust Company in Brooklyn? A. Yes.

Q. And did you go to the Brooklyn office of Fuller & Gray? A. I went to the Brooklyn office.

Q. And did you get a certificate for 100 shares of Big Four? A. Yes.

Q. And did you meet Mr. Colwell at the Home Trust Company in Brooklyn? A. I was to meet him at half past two, but he did not get there till some time later.

Q. You met him there finally? A. Yes.

Q. Did you deliver stock to him? A. Yes.

Q. Did he give you anything? A. He did.

Q. What did he give you? A. $5,512.50.

Q. In cash? A. Yes.

Q. That means currency? A. Yes, currency.

Q. You turned that into Fuller & Gray, did you? A. Yes.

Q. You gave Fuller & Gray a receipt for that stock, did you? A. I did.

Q. Is this second paper I now hand you the receipt? A. Yes.

Mr. Kresel.— I offer that.

(The paper offered was received in evidence and marked Exhibit M-74.)

Mr. Kresel.— This receipt is (reading):

"No. 544. Brooklyn, N. Y., *November 6th,* 1912. Received from Fuller & Gray 100 shares Cleveland, Cincinnati, Chicago & St. Louis, Certificate No. C2568."

Underneath — now see if I am right — underneath was written No. 25.

Q. Is that right, and that was subsequently changed to 500, is that right? A. I didn't make out the receipt.

Q. I didn't ask you whether you made it? A. It looks so.

Q. Isn't it the fact that first was written No. 25? A. Yes.

Q. And then it was changed to No. 500? A. Yes.

Q. And is that your signature, Frederick A. Coe? A. It is.

The President.— Strictly, if it appears on the face, you are as competent to testify or state what it is as the witness.

Q. Do you remember whether the No. 25 was written on this paper before you signed it? A. I don't.

Q. Do you remember whether the number now appearing there, 500, was on the paper before you signed it? A. I don't.

Q. When you met Mr. Colwell at the Home Trust Company, did you see him draw any money from that institution? A. He did not.

Mr. Kresel.— That is all.

The President.—Any cross-examination?

Mr. Hinman.— Just a word, if I may.

Cross-examination by Mr. Hinman:

Q. Harris & Fuller names have been used here. What concern was that? A. Why —

Q. What was their business? A. Why, they are stockbrokers, 45 Broadway.

The President.— And were they such in October and November, 1912? A. They were.

Q. Do you know whether Mr. Colwell, of whom you have spoken, had a desk in their office? A. I don't.

Mr. Hinman.— Nothing further.

(Witness excused.)

Mr. Kresel.— Now, Mr. Fuller.

The Clerk.— You do solemnly swear that the evidence you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer, as Governor of this State shall be the truth, the whole truth and nothing but the truth so help you God.

The Witness.— I do.

The Clerk.— What is your full name?

The Witness.— Melville B. Fuller.

MELVILLE B. FULLER, a witness produced on behalf of the Managers, having been first duly sworn in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Kresel:

Q. Mr. Fuller, are you a member of the firm of Harris & Fuller? A. I am.

Q. They are bankers and brokers in the City of New York? A. They are.

Q. On the 18th of November, 1912, did William Sulzer, who is now the Governor, take an account with your firm? A. The date again, please.

Q. November 18, 1912? A. I could not say.

Q. Well — A. Oh, 1912, yes.

Q. On the 18th of December, 1912, did William Sulzer have an account with your firm? A. He did.

Q. On the 18th of November, 1912, did William Sulzer make any payment on that account? A. I would have to refer to my books or my —

Q. Refer to anything you please, sir. Have you your books here? A. I have, in a safe deposit vault in Albany.

Q. Perhaps I can help you out.

Mr. Herrick.—You have a transcript. You can use that.

The Witness.— Mr. Kresel said he would give me notice. They have been in a safe deposit vault for two days. He said he would give me time to get them here.

The President.—What was the witness' answer?

The Witness.—They are in a safe deposit vault in Albany, and have been there for two days. Mr. Kresel said he would give me ample time to get them here. I heard from him just now.

Q. See if that will refresh you recollection? A. This is a transcript of William Sulzer's account.

Q. I didn't ask you what that was. I asked you whether that will refresh your recollection so as to enable you to answer the question, whether on the 18th of November, 1912, William Sulzer made a payment to your firm. A. He did.

Q. How much? A. $10,000.

Q. How was it paid? A. In bills.
Q. To whom was it paid? A. To me, personally.
Q. On the 16th of December, 1912 —

Mr. Hinman.— Mr. Kresel, pardon me, you said the 18th of December.

The Witness.— November.

Mr. Kresel.— I said the 18th of November.

Q. On the 16th of December, 1912, did Mr. Sulzer make another payment to the account? A. He did.
Q. How much? A. $6,000.
Q. In cash? A. In cash.

The President.— What do you mean, bills?

The Witness.— Currency, bills.

Mr. Kresel.—That is all.

Mr. Marshall.— Just wait a minute.

The President.—Any cross?

Mr. Marshall.— Just one second, your Honor.

Mr. Hinman.— If the Court please, in order to avoid discommoding Mr. Fuller, we are willing now to take up this account of Harris & Fuller, and have it explained; or, if the Court prefers, and Mr. Fuller is willing, we can let it stand until later, and have him come back.

The President.— The Court has certainly no preference, and prefers to accommodate the witness, if possible.

Cross-examination by Mr. Hinman:
Q. Have you before you, Mr. Fuller, a statement or a transcript of the account of the firm of Harris & Fuller with William Sulzer? A. I have.

Mr. Kresel.— One minute, please. I shall object to the introduction of any copies of the books of Harris & Fuller, and I shall insist that the books be produced.

The Witness.— I can have them here in fifteen minutes, sir.

The President.— Well, if objection is made the objection is good, so you will have to get them here. In the meantime your examination will be suspended.

The Witness.— Do you want them now?

The President.— What is that?

The Witness.— Do you want them now?

The President.— Yes, you can go down and get them.

(Witness excused.)

Mr. Todd.— I call the Clerk of the Assembly.

Mr. Brackett.— George R. Van Namee. He has been sworn.

GEORGE R. VAN NAMEE recalled.

Examination by Mr. Todd:

Q. Will you produce the original Direct Primary Bill which was introduced at the session of the Legislature in 1913? A. I had it here (producing).

Mr. Todd.— I offer that in evidence.

(The bill offered in evidence was received in evidence and marked M-75.)

Senator Duhamel.— Mr. President.

The President.— Senator Duhamel.

Senator Duhamel.— Which Direct Primary Bill? There were several introduced in the Assembly and Senate.

Mr. Todd.— I will read that.

The President.— After he has got one marked he will explain which one that bill is.

Mr. Herrick.— Do you intend to read the bill?

Mr. Todd.— I don't intend to read the bill, but I intend to describe it definitely enough so the members of the Court will understand it was the bill favored by the respondent.

The President.— Doesn't the printed bill show who introduced it?

Mr. Todd.— This bill was introduced by Mr. Eisner.

The President.— Does that identify it to you, Senator?

Senator Duhamel.— That will suffice.

Mr. Herrick.— What date?

Mr. Todd.— I believe the other side will concede it was the one favored by the respondent, or do you want that proved?

Mr. Marshall.— Let me see it?

Mr. Herrick.— There are so many of these bills.

Mr. Marshall.— It does not show the date of its introduction.

The Witness.— I can give that.

Mr. Marshall.— It does not show the date of introduction or the introductory number.

Q. Will you state the date when this bill, Managers' Exhibit 75, was introduced in the Assembly? A. Introduced by Mr. Eisner on April 22nd, 1913, introduction number 2215, print number 2758.

Q. Will you produce the original direct primary bill which was introduced at the extraordinary session of the Legislature in 1913? A. I have it.

Q. When was this bill introduced, and by whom? A. By Mr. Eisner, June 16th, 1913, introductory No. 4, print No. 4; at the extraordinary session.

Mr. Todd.— We offer it in evidence.

(The bill was received in evidence and marked Exhibit M-74.)

Mr. Todd.— The clerk of the Assembly desires to keep the original bill. Any objection on the part of the defense?

Mr. Herrick.— If he will say they are correct copies we will take them.

The Witness.— Yes, they are public prints.

Mr. Herrick.— Yes, we will take them.

Mr. Todd.— Will the stenographer mark the substitutes for these originals?

(The copies of the two bills already marked Exhibits M-75 and M-76 respectively, were received and marked Exhibits M-75 and M-76 respectively.)

Q. Will you produce the original bill introduced in the Assembly by Assemblyman Sweet, Introduction No. 1046, printed No. 2139. A. That is not quite correct. The print number was originally 1101, and on amendment it was 2139. The introductory number is 1046.

Mr. Hinman.—What was that introductory number?

The Witness.— 1046.

By Mr. Todd:

Q. Well, it is the bill in relation to the bridge at Minetto? A. That is the bill.

Q. When was that bill introduced by Assemblyman Sweet? A. February 13, 1913.

Q. What action was taken on it by the Assembly? A. It was passed March 31 by a vote of 130 to no — 130 ayes and noes none.

Mr. Todd.— I offer it in evidence.

(The paper offered in evidence was received and marked Exhibit M-77.)

The President.— Did it pass the Senate?

Mr. Todd.—We will show that later.

The President.— I was going to say, perhaps the other side will concede it.

Mr. Marshall.—We will concede it. Was it amended?

The Witness.— No. I have the whole record.

Mr. Todd.— I understand it is conceded that this bill was passed by the Senate.

Mr. Herrick.— It was passed by the Senate. What was the vote in the Senate, do you know? Do you know that? Have you got that?

The Witness.— I don't know, but I have the whole history of the bill.

By Mr. Marshall:

Q. It passed the Senate on the 2d day of May, 1913? A. Yes.

By Mr. Todd:

Q. Have you the original bills, introduced by Assemblyman Prime, one known as the State Route Bill and the other known as the bill establishing certain State routes in the counties of Essex and Warren? A. I have.

Q. Produce them? A. Here they are, sir.

(Witness produces papers referred to by counsel.)

Mr. Marshall.— Let me see that Sweet bill.

The Witness.—You took it.

Mr. Marshall.—As printed?

Mr. Todd.— Here it is.

Mr. Marshall.— No, no, the Sweet bill.

The Witness.— Oh, the Sweet bill; yes, there was an amendment. It was not the original — the original bill was amended; I have them both, though.

Mr. Todd.— Do you want anything else?

Mr. Marshall.— That is all I want to see at present.

Mr. Todd.— I offer in evidence the bill of Assemblyman Prime —

Q. What was the introductory number? A. That is it (indicating).

Mr. Todd.— Bearing introductory No. 2032.

Mr. Hinman.— Twenty thirty-two?

Mr. Todd.— Introductory number 2032.

The Witness.— March 27, 1913.

Q. And was it introduced on March 27, 1913? A. Do you want me to give the whole history of it?

Mr. Todd.— Just a minute.

(The bill offered in evidence was received and marked Exhibit M-78.)

Mr. Hinman.— What is the title of that one?

Mr. Todd.— The title of the bill just offered is "An act to amend the Highway law in relation to additional State routes in the counties of Essex and Warren."

I offer in evidence another bill introduced by Mr. Prime on April 2, 1913, bearing introductory number 2143.

Mr. Hinman.— Twenty-three forty-three?

Mr. Todd.— Twenty-one forty-three. That is an act to reappropriate for the improvement of a new State route in the counties of Essex and Warren the unexpended balances of moneys appropriated by Chapter 133 of the Laws of 1911. I offer that in evidence.

(The bill offered in evidence was received and marked Exhibit M-79.)

Q. What action was taken on Assemblyman Prime's bill, Exhibit No. 78, being the bill to amend the Highway Law in relation to additional State routes in the counties of Essex and Warren?

Mr. Hinman.— Pardon me. That was introductory 2032. Oh, Exhibit 78 it is.

The Witness.— On April 22 it was reported to second reading in the Assembly; on April 23 to third reading and passed by a vote of 128 ayes and 2 noes.

The President.— I think you may omit the intermediate action and go right to the question of whether the Assembly passed it or not?

Mr. Todd.— That is satisfactory. That is all we want.

Q. What happened to the bill introduced by Assemblyman Prime to reappropriate certain unexpended balances, which has been marked Exhibit M-79? A. It was passed in the Assembly on April 29 by a vote of 96 ayes, noes 20.

Q. Have you the original bill introduced by Assemblyman Patrie? A. I have.

Q. What is the introductory number and the printed number? A. Introductory number —

Mr. Marshall.— (Interrupting) Just a moment please. Under what count is this material? I ask the counsel under which of the articles of impeachment he is now proposing to proceed?

Mr. Todd.— It has to do with the article of impeachment which relates to the trading of executive approval for —

Mr. Marshall.— (interrupting) Article 7?

Mr. Todd.— (Continuing) for the votes of members of the Legislature.

Mr. Marshall.—There is no reference in Article 7 of transactions except transactions with relation to the bills introduced by Honorable S. G. Prime, Jr., and Hon. Thaddeus C. Sweet. That has reference to — the counsel is now offering a bill introduced by Assemblyman Patrie. There is no reference to that at all in the articles. We have had no notice with regard to it. We have not been invited to try that issue.

Mr. Todd.— We believe that the testimony is competent upon —

Mr. Marshall.— It is a different situation altogether from the question which was presented under the articles of impeachment which related to the receipt of money.

Mr. Todd.— We believe that the same rule applies and that this proof is competent the same as the proof that has been ad-

mitted upon the contributions made by parties other than those named in the articles; that the language of the section is the same substantially — or the language of the article rather.

Mr. Marshall.— No.

Mr. Todd.— It states that among other, I believe.

Mr. Marshall.— No, there is no such thing, I think not.

Mr. Todd.—That is my recollection.

Mr. Marshall.— It was (reading) "That the said William Sulzer then being the Governor of the State of New York, unmindful of the duties of his office and in violation of his oath of office, was guilty of mal and corrupt conduct in his office as such Governor of the State, and was guilty of the corrupt use of his position as such Governor and of the authority of said position, and of a violation of section 775 of the Penal Law of said State, in that, while holding a public office, to wit: the office of Governor, he promised and threatened to use such authority and influence of said office of Governor for the purpose of affecting the vote or political action of certain public officers; that among such public officers, to whom the said William Sulzer promised, or threatened to use his authority and influence as Governor, for the purpose of affecting their votes, said persons to whom such promises or threats were made were Honorable S. G. Prime, Jr.," and then Thaddeus C. Sweet. But there is nothing to indicate anything with regard to Mr. Patrie or any other Assemblyman. It might be omitted — under their theory without any reference to Sweet and no reference to Prime and then proceed to try the case with regard to some Assemblyman with whom we have no notice — whose name we have not even heard and as I said as to which we have no opportunity to investigate.

The President.— This is plainly distinguishable from the other cases. In the other cases it was, while certainly admissible on one ground, the admission of these other contributions to show that the scienter as it is called of the respondent to show that it did not happen by accident. The cases were too numerous to regard that way. But in this case of course there is nothing of the kind

here. It is charged here that there was a direct agreement with certain members of the Legislature if they would support the bill that the respondent advocated that he would sign their bills, otherwise not. I don't see how there is any question of scienter in there at all. I think therefore this is incompetent; the objection is sustained.

Mr. Todd.— That is all.

The President.— Any cross?

Mr. Marshall.— No cross-examination.

Mr. Herrick.— Do you want a concession that those bills passed the Senate also? We gave it to you with regard to one bill.

Mr. Todd.— Yes, I would like a concession — if you are willing to give it — that the two bills introduced by Assemblyman Prime and offered in evidence were passed by the Senate.

Mr. Marshall.—All right, conceded.

Mr. Herrick.— Conceded.

The President.— Will you admit — it seems to the Court it is hardly worth while to take up time with matters that are a public record.

Mr. Herrick.— I have conceded it, that it passed the Senate.

The President.— That it passed the Senate and was submitted to the Governor for action, as required by the Constitution.

Mr. Marshall.— Yes, we have conceded that.

The President.— You have got that, counselor, and that will enable you to dispense with that part of the case.

Mr. Todd.— That is all.

(Witness excused.)

Mr. Todd.— Mr. Platt.

Mr. Kresel.— We want Mr. Platt, the Governor's secretary.

The Clerk.— You do solemnly swear that the evidence which you shall give upon this hearing upon certain articles of impeach-

ment preferred against William Sulzer, as Governor of this State, shall be the truth, the whole truth and nothing but the truth, so help you God?

The Witness.— I do.

The Clerk.— Chester C. Platt.

Mr. Todd.— The witness has just stepped down to get the papers that he was required to produce here.

CHESTER C. PLATT, a witness called on behalf of the Managers, having been first duly sworn in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Todd:

Q. You are an official of the State of New York? A. Yes.

Q. What is your office? A. Secretary to the Governor.

The President.— Will you speak a little louder, witness, and look to the furthest member of the court.

Q. You have been served with a subpoena duces tecum requiring you to bring certain documents here? A. Yes.

Q. And you produced the bill introduced by Assemblyman Sweet bearing introductory number 1046 and printed number 2139? A. I have them here, yes, sir, I have that bill.

(Witness produces papers referred to.)

Q. And there are some other documents accompanying that bill? A. Yes.

Q. Is there a report there from the—from Mr. Delaney, the Commissioner of Efficiency and Economy? A. Yes, there is; and there is various other correspondence relating to the bill.

Mr. Todd.— I would like to have the report of Commissioner Delaney marked for identification.

(The paper offered for identification was received and marked Exhibit M-80 for identification.)

Q. Have you also produced a report upon this bill made by the Superintendent of Public Works? A. (Witness examines papers.) A. Yes, there seems to be a report by Mr. Peck, not signed, but it is noted in lead pencil by Mr. Peck.

Mr. Todd.— I offer that in evidence — or rather, I would like to mark it for identification.

(The paper offered for identification was received and marked Exhibit M-81 for identification.)

Q. Is there also a brief there filed by Assemblyman Sweet in favor of the bill? A. There is.

Mr. Todd.— I would like to have that marked for identification.

(The paper offered for identification was received and marked Exhibit M-82 for identification.)

Q. You also produce the printed bill in the form that it came to the Governor? A. Yes.

Q. And is the jacket on this bill in the same condition that it was when it came to the Governor's office; that is, so far as the markings on it are concerned, showing the history of the bill? A. I don't know about that, about the marking.

Q. Hasn't the bill been in your custody? A. It has been on file in our office, but rather in the custody of Mr. Waldron and Mr. Taylor; they handle the bills.

Q. You understand that the history of the bill — the true history of a bill is shown by the marking on that jacket? A. Yes.

Mr. Marshall.— May I look at the jacket?

(Paper is passed to counsel.)

Q. Have you also accompanying this bill among the papers that were before the Governor, a letter written by Alexander E. Kastel to T. C. Sweet, dated March 20, 1913, with 4 photographs annexed? A. Yes, I do.

(Witness produced papers referred to.)

Mr. Todd.— I ask that that be marked for identification. Make two markings, one for the photographs and one for the letter.

(The letter offered for identification was received and marked Exhibit M–83 for identification, and the photographs were marked Exhibit M–84 for identification.)

Q. Will you produce a report made by Commissioner Carlisle upon Assemblyman Prime's bill appropriating certain moneys for

State routes in the counties of Essex and Warren? A. That report was not to be found in our office, but I have obtained a copy of it from Mr. Carlisle, a carbon copy; there is his signature.

(Witness produces paper.)

Q. Now, have you another report from Mr. Carlisle from this same bill? A. I have not.

Q. Have you looked for another report. A. I have looked for —

The President.— Speak louder, witness.

The Witness.— We find nothing in our office from Mr. Carlisle relating to this bill so I asked for this report and obtained it.

Q. Well, you recall, don't you, that there were two reports made upon these bills by Commissioner Carlisle, were there not? A. No, not that I remember; not that I knew.

(The carbon copy of report offered for identification was received and marked Exhibit M-85 for identification.)

Q. By these bills I mean the Prime bills? A. No, I didn't know of two reports.

Mr. Todd.— That is all.

The President.— Any cross?

Mr. Stanchfield.— One moment.

Q. Mr. Platt, is there kept in the Executive Chamber a record or book of statements that from time to time are quoted in the newspapers as coming from the Governor? A. No.

Q. Who has the record of statements issued by the Governor upon public affairs? A. Mr. Graves has something in that line.

Q. What is the first name of Mr. Graves? A. George Graves.

Q. Is there a book in which those statements which you say Mr. Graves keeps in the Executive Chamber? A. He has copies of some statements that have been given out, Neostyle copies.

Q. To whom is the substance of those statements ordinarily dictated? A. To Mr. Smith, the Executive stenographer.

Q. Is he there now? A. I think he is.

Q. What is his name? A. Benjamin Smith.

Q. So that the stenographer who took down these statements

would be Benjamin Smith, and the man who would have the record of them would be George Graves? A. That is correct.

Mr. Stanchfield.— That is all.

Mr. Stanchfield.— Mr. Graves.

The Clerk.— Mr. Graves, you do solemnly swear that the evidence which you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer, as Governor of this State, shall be the truth, the whole truth and nothing but the truth, so help you God.

The Witness.— I do.

The Clerk.— What is your full name?

The Witness.— George B. Graves.

GEORGE B. GRAVES, a witness called in behalf of the Managers, having been first duly sworn, in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Stanchfield:

Q. Mr. Graves, are you employed in the Executive Chamber? A. I am.

Q. Have you been during the past summer? A. Yes, sir.

Q. During the months of June, July, August and September? A. I have.

Q. What has been your position there? A. Engrossing and record clerk.

Q. And have you a book or a record as was described by the last witness, Mr. Platt, containing statements upon public matters that have been issued by the Governor from time to time? A. I have the statements given to the press, I have not the books. I do not have charge of the books.

Q. You have what? A. Neostyle statements given to the press; I keep those, but I have not the books.

Q. In what form are they kept? A. Just Neostyle copies. I have brought one with me, which I can show you.

By the President:

Q. What is the term you use? A. Neostyle copies.

Q. What is that? A. It is a duplication of typewriting.

By Mr. Stanchfield:

Q. Have you those statements for the latter part of July, 1913? A. Yes, I have.

Q. Have you them with you? A. I have several with me.

Q. See if you have with you the statements that were issued by the Governor to the press on the 30th of July, 1913? A. No, I haven't that with me.

Q. There is such a statement? A. Well, I could not say. Any particular bill I would have to look at it to find out.

Q. Not with reference to any bill. Do you recall reading during the summer a statement coming from Governor Sulzer on the subject of the Schiff transaction? A. Yes, I recollect it very well, of course.

Q. In which he made a statement in regard to it? A. Well, I can't remember that, about the statement.

Q. You say you remember very well that he made a statement on the subject? A. I remember the subject well, but I do not remember the statement.

Q. It is that statement that I want. Will you get it and produce it here? A. If I have it I will do so.

Q. Well, you have it, haven't you? A. I can't tell.

Q. What makes you sceptical about it; haven't you looked to see? A. No, I haven't; it was not in my subpœna, and I did not look for that at all.

Q. Will you kindly step down and get it for me and bring it up here at once? A. Yes.

The President.—While he is doing that we can save time by putting in another witness.

Mr. Todd.—Mr. Sweet.

The Clerk.—You do solemnly swear that the evidence you shall give upon this hearing upon certain articles of impeachment

preferred against William Sulzer, as Governor of this State, shall be the truth, the whole truth, and nothing but the truth, so help you God.

The Witness.— I do.

The Clerk.—What is your full name?

The Witness.— Thaddeus C. Sweet.

THADDEUS C. SWEET, a witness called on behalf of the Managers, having been first duly sworn in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Todd:

Q. Where do you reside, Mr. Sweet? A. Phoenix, N. Y.

Q. What office do you hold in the Government of the State of New York? A. Member of Assembly.

Q. From what county? A. Oswego.

Q. How long have you held that office? A. This is the fourth year.

Q. During the regular session of 1913 of the Legislature did you offer for passage in the Assembly an act to provide for the construction of a bridge over a part of the Oswego river at Minetto? A. I did.

Q. And is this the act which I show you —

The President.—You have got that, and the fact that it was passed by the Senate.

Mr. Todd.— I do not think the date of the passage by the Senate was conceded. I would like to have that on the record.

The President.—Yes.

Mr. Todd.— It appears on the jacket that it passed on May 2d, 1913.

Mr. Marshall.— That has been admitted as being the date.

Q. Will you state the object of this bill?

Mr. Herrick.— The bill speaks for itself; it is in evidence.

Mr. Todd.— I think, if the Court please, rather than boring the Court by reading a long bill, that the witness could quickly state the reason for the bill and its requirements.

The President.— Is there any objection to giving the purport of it? What was it to construct?

Mr. Todd.— It was to construct a bridge.

By the President:

Q. In your county? A. Yes, sir.

Mr. Todd.—And appropriating certain moneys for it. I desire to show the need of that bridge there.

The President.— That we can hardly concede. The Legislature has to determine that. The Legislature is the body to determine subject to the approval or veto of the Governor, the propriety and necessity of legislation. Courts cannot consider legislation except from one point of view, whether it is constitutional or not. When it is constitutional, the question of the propriety of the legislation is exclusively for the Legislature.

By Mr. Todd:

Q. In the place where you desired this new bridge to be constructed, had there been a bridge theretofore? A. There had been a bridge to Minetto across the river.

Q. And what had happened to that bridge?

Mr. Marshall.— Objected to as immaterial.

The President.— Objection sustained.

Q. After the bill had gone to the Governor, did you have occasion to go to see him about it? A. I did.

Q. Before you went to the Governor, had a report been made upon this bill by John H. Delaney, Commissioner of Efficiency and Economy of the State? A. I could not say whether the report had been made before he went to the Governor or not.

Q. I show you Managers' Exhibit 81 for identification, and ask if you will look at that and refresh your recollection? A. This is

not anything that I filed with the bill. It went from the Bureau of Efficiency and Economy.

Q. Does the date of that paper which you hold in your hand make it possible for you to answer my question as to whether or not this report had been made to the Governor before you talked with the Governor about the bill? A. I think it had not.

Mr. Todd.— I now offer this report in evidence.

Mr. Marshall.— That is objected to as immaterial and irrelevant.

The President.— I will make the same ruling as before.

Mr. Todd.— This is a report, if your Honor please, in reference to the bill under consideration, made by the Commissioner of Efficiency and Economy of the State of New York. It was one of the papers which was before the Governor at the time that he had this bill under consideration.

The President.— I do not see that this Court can enter into that question. The question, as I have already said— legislation is left to the Legislature, subject to the approval or disapproval of the Governor, and subject, of course, to being passed over his veto, and we cannot sit in review of that in this Court. The gist of this article does not relate to whether the bill was a wise one or unwise, but whether there was any bargaining done. There the vice, if it exists, exists in this charge.

Mr. Todd.— It is our view of it that this has some bearing upon the intent of the Governor in the action that he took upon this bill. We desire to show that it was approved by the Commissioner of Efficiency and Economy and that it was approved by the Superintendent of Public Works; that that action occurred after the Legislature had passed upon the bill; and while I quite concur in what your Honor says about the action of the Legislature, this was subsequent action by officers of the State of New York charged with the duty to advise the Governor in the premises.

The President.— Yes, but under the Constitution, the responsibility for approval or disapproval is vested in the Governor.

I do not think that this Court can consider that question, whether it was wise or unwise.

Mr. Stanchfield.—If the Presiding Judge will pardon me for a moment. This testimony is introduced under the Seventh charge. The exact language is this:

> "Honorable Thaddeus C. Sweet, a member of Assembly for the County of Oswego, for the year 1913, the threat being that if the said Sweet did not vote for certain legislation in which said William Sulzer was interested, and, as Governor, was pressing to passage, he, said Sulzer, would veto a bill that had already passed the Legislature and was pending before him, appropriating certain moneys for the construction of a bridge in said County of Oswego, the said Governor at the time of said threat well knowing that the said Assemblyman, Thaddeus C. Sweet, was desirous of having said bill for said appropriation signed."

Now, the contention of the Board of Managers is, as bearing upon the proposition as to whether or no the threat was coercive or intimidative in its nature and character, they have the right to go behind the finding of the Legislature which passed this bill, and show to the Court in its entirety that this legislation was for the public good, and that it was warrantable legislation, such legislation as the duty was imposed upon Mr. Sweet in his legislative capacity to introduce and the passage of which it was his duty to advocate and to force by every means in his power.

Now, as bearing upon the question between Mr. Sweet and the Governor, as to whether after this threat was made to Mr. Sweet, I think we have a right to show as well that the propriety of this legislation was submitted to the Committee on Economy and Efficiency by the Governor, of which Mr. Delaney was the Chairman, and that that Committee reported back to the Governor for his information that this legislation was fit and proper to pass.

I think we have a right to show all these facts as part of the transaction and as bearing upon the question as to whether Mr. Sweet is giving a truthful narrative as to what took place between him and the Governor at the time alleged in this charge.

The President.— I think not. The Court adheres to its ruling that cannot be admitted. We must assume that the Legislature did what it thought wise to do, and the Governor had the same privilege as the Legislature, and we cannot sit in review of the propriety of their acts. If this witness had any particular interest in the bill, assuming that every assemblyman has an interest in the bills relating to the affairs of his constituents, — that is what he was elected for, but let us see what passed between him and the Governor, that is competent; but beyond that I do not think you can go.

Q. When did you visit the Governor in respect to this bill? A. The exact date I do not remember, but it was about two weeks after the Legislature had adjourned.

Q. And when did the Legislature adjourn, May third? A. About that time.

The President.— This was a bill the Governor could hold over for thirty days?

Q. This was one of the 30-day bills? A. It was.

Q. Did you have a talk with the Governor in reference to this bill on the occasion that you visited him? A. I had.

Q. Will you state the conversation? A. As the Governor was about to leave the Executive Chamber, I having had an appointment with him for that morning, and he not being able to see me, I had sat through the previous whole day, and I approached the door as he was leaving, and said, "Governor, I had an appointment with you this morning. I wish I might see you before you go, as I am anxious to get home."

He said, "Assemblyman, what can I do for you?"

I said, "I am here in the interest of some legislation pending in your department, particularly my Minetto Bridge bill."

He said, "Assemblyman, how did you vote on my Primary bill?" I said, "I voted against it."

He then said, "How are you going to vote in the Extraordinary Session?"

I said, "According to the sentiment and in the interest of my district."

Q. He laid his hand on my arm, stroking it, and said, "See Taylor, Assemblyman."

The President.— Said what?

The Witness.— See Taylor, and smooth him the right way.

The President.— Speak up a little louder, and look at the furthest member of the Court.

Mr. Stanchfield.— Let the stenographer repeat that.

The President.— I think they will understand even better from him than from the stenographer, but you can have it either way. Now, speak louder, and commence the conversation.

The Witness.— You want the beginning of the conversation?

The President.— Just as you have narrated it.

Judge Werner.— We have heard most of that. We don't want that repeated.

Senator McClelland.— From "See Taylor." That is just what we want to get.

The President.— He has said, "See Taylor," he hasn't said anything since that time.

The Witness.—"See Taylor"— is that right?

The President.— Now, speak loud. After "See Taylor," what occurred?

The Witness.—"See Taylor, smooth him the right way, Assemblyman, and bring your bill to me, but remember, Assemblyman, I take good care of my friends." I left him. I saw Mr. Taylor that afternoon.

Mr. Brackett.— Did you smooth him?

The Witness.— I didn't have to.

Mr. Marshall.— I object to that as improper.

The President.— Objection sustained. What occurred between Taylor and you?

The Witness.— I said, Mr. Taylor. I come to you at the direction of the Governor, in the interest of my legislation pending. He got out a file containing my bills and went over them, and

as he came to them, one referring to an amendment of the charter of the city of Fulton, he said, " There is no use considering this bill, because the Governor holds that his Home Rule bill will take care of the feature of this proposed legislation."

Another bill was pertaining to the Fulton city charter, and he said, " This bill meets the same fate."

I then said, " How about my Minetto Bridge bill?"

He said, " I haven't anything to do with that bill. That carries an appropriation, and it is with Mr. Delaney, the Chairman of the Bureau of Efficiency and Economy. You will have to see him. He said, " What have you saved out of this wreckage? "

I said, " Not very much of anything, so far."

He said, " How about your Montcalm Park bill? "

I said, " I am very anxious to have that bill approved."

He said, " I will put that bill across for you, Assemblyman."

I thanked him and asked him to call me when the Governor took action upon it, which he did.

I said, " Where will I find Mr. Delaney? "

He said, " I think Mr. Delaney has gone to New York to attend the Anhut trial, but his office is in the Assembly parlor, on the third floor."

I came up to the Assembly parlor and inquired for Mr. Delaney, and was informed that he was in New York. They did not know when he would return.

I then went home; I came back, I believe, the following week and sought Mr. Delaney and stated to him my conversation.

Mr. Marshall.— I object to conversation between Delaney and the witness.

The President.— He was referred to Taylor by the respondent here.

Mr. Marshall.— Not referred. Mr. Taylor merely said that matter called for an appropriation, and that was in Mr. Delaney's department, but the Governor did not refer the witness to Delaney.

The Witness.— He referred him to Taylor and Taylor referred him to Delaney.

Mr. Marshall.— Referred him to Taylor with regard to the latter, and said, "See Taylor and smooth him the right way," or words to that effect. The Governor did not, therefore, refer the witness to Delaney any more than any other citizen of the State.

The President.— What was it the witness said that Taylor told him about Delaney? I thought he told him he must see Delaney?

Mr. Todd.— He did, if your Honor please, tell him that.

The President.— I think it may be admitted.

The Witness.— Just give me the last of my statement.

The stenographer repeated as follows: "I came back, I believe, the following week, and sought Mr. Delaney, and stated to him"—

The Witness.— Mr. Taylor had informed me that my Minetto bridge bill was pending in his department.

He said he believed it was.

I told him of my interview with the Governor, and my desire to have the bill approved, and at the request of the Speaker of the House, stating —

Mr. Marshall.— May it please the Court, I would like to make this further suggestion:

Doesn't this conversation with Mr. Delaney come within the ruling that your Honor made that the report of his communication to the Governor was not competent? This is entirely in the same direction.

If we could review the action of a Governor in any case and have the question of the sufficiency of the reason which prompted him in favoring or vetoing a bill investigated upon a subsequent occasion, why the threat of such investigation might prevent almost any governor from acting independently with regard to matters which came before him, especially those which call for an appropriation.

The President.— I do not see the force of that argument, because he has referred this witness to Taylor with that expression and Taylor sent him to Delaney.

Mr. Herrick.— Hardly that. He says he didn't have charge of that; that where it contained an appropriation the Department of Efficiency and Economy had charge of it.

Mr. Todd.— The language of the witness, as I recall it, was, you will have to see Delaney about that, that is his department.

Mr. Herrick.— That may all be, but he sent him to Taylor. He sent him to Taylor as his legal adviser, his agent, as far as that is concerned, his personal attorney, so to speak.

The President.— It is not on the merits of the bill. Of course, as the courts have already said, we cannot review — or the Presiding Judge has said, we cannot review the action of a governor so far as the merits are concerned. The question in this case is did he make a corrupt bargain concerning that action. That is the question, not the merits.

Mr. Herrick.— This didn't have anything to do with that.

The President.— We will see, when we hear what passed between him and Delaney.

Mr. Herrick.— What we really claim is that an agent cannot delegate authority. The Governor sent him to Taylor. Now, according to the witness, Taylor sent him over to an entirely different person.

The President.— Proceed. What took place between Taylor, Mr. Delaney and yourself?

Q. Proceed with the conversation. A. I said, as near as I can pick it up, that the Speaker of the House had requested all members having bills pending in the Executive Department, to file any and all briefs or documents pertaining to the bills, with the bills, with the Governor for his consideration; and that I had several instruments which I desired to lodge with the bill. Among them was a letter from the Superintendent of Public Works, Mr. Peck.

Q. Is this the letter that I show you, marked Exhibit M-81 for identification? A. It is.

Mr. Todd.— I offer it in evidence.

Mr. Marshall.— I object to that.

The President.— I don't see its competency now. Proceed.

The Witness.—A letter from Mr. Castle, Deputy State Engineer, on Barge Canals.

Q. And is this the letter from Mr. Castle, Exhibit M-83 for identification? A. It is. Some photographs of the original bridge before it collapsed. The work of the Barge Canal Construction at that point. Some photographs showing a temporary suspension bridge spanning of the original bridge that collapsed. I stated to him the importance and urgency of the matter at length, and he asked me to put on paper what I had stated to him.

I went to the Ten Eyck Hotel and dictated a brief and came back and lodged that.

Q. Does your brief that you have just referred to — is this it, marked Exhibit M-82 for identification? A. It is. I gave him the brief with the other papers, and he examined them, examined the photographs, and said that he readily appreciated the urgency of the situation, and would do all he could to further its favorable action at the hands of the Governor. I left after asking him if he would wire me as soon as the Governor took action on the bill.

Mr. Marshall.— Does that cover the whole conversation with Mr. Delaney?

The Witness.— No, sir.

Q. State the rest of the conversation? A. The conversation I didn't relate was the reasons why the bill should be approved, that the original bridge was one in which the State had participated in construction and maintenance since the original canalization of the Oswego river, in the year 1828; that through the Barge canal construction they had diverted half of the flow of the river.

Mr. Herrick.— We are now getting the report of the superintendent, which you excluded.

Mr. Todd.— It was asked for by Mr. Marshall.

Mr. Marshall.— I asked as a preliminary question to a motion to strike out this question on the ground that it merely indicated a view on the merits of this case, of the witness and the arguments which he presented to Delaney, and the fact that Delaney said he would give the matter consideration, and therefore it was entirely incompetent and immaterial and comes within the ruling which your Honor has heretofore made.

The President.— We will wait until it is finished.

Mr. Herrick.—That is the only purpose of my question.

The President.—You stated you gave the reasons which you had for its passage.

The Witness.— I was stating this —

The President.— I do not think it is necessary to go into detail. I think that comes within the rule. Then you say you left Delaney?

The Witness.— I did.

The President.— Now, then, what occurred?

Q. Did Mr. Delaney at that time, or shortly thereafter, prepare the report which I show you, marked Exhibit M-80 for identification? A. It so stated. I did not see the document prepared.

Q. What happened to your bill?

Mr. Marshall.— Isn't this the proper time to renew my motion to strike out the testimony of the witness as to his conversation with Delaney, as being incompetent and immaterial and being merely an argument made by him to Delaney as to the merits of the bill?

The President.— I think I will let it stand.

The Witness.— My bill was vetoed.

Q. How did you vote on the Primary Bill at the regular session?

Mr. Herrick.— That is objected to.

Q. Of the Legislature?

The President.— He said he told the Governor he voted against it. Hasn't he said that already?

The Witness.— Yes, sir.

Q. And how did you vote on the Direct Primary Bill at the extraordinary session?

Mr. Herrick.— That is objected to.

The President.— Objection sustained. How is that material? Had it been voted before?

The Witness.— No, sir.

Mr. Todd.— We anticipate, if the Court please, that the fact that the witness did not smooth Mr. Taylor the right way has some bearing upon the question.

The President.— If this witness was against it, it shows he did not receive the price of the corrupt bargain.

Mr. Todd.— It also goes to show this man did not make a bargain. We do not claim there was a bargain made.

The President.— The objection is sustained. I do not see its relevancy.

Mr. Todd.— We desire to show the attempt to make the bargain.

Mr. Parker.— It was not really a bargain, it seems to us back here. It was an attempt at coercion, I suppose it is.

The President.— How does this show, whether it failed or succeeded, how does that make any difference with the Governor's defense or lack of defense?

Mr. Parker.— It seems to me if it is not of very great importance, it is certainly of no harm for the Court to know precisely what was done by this Assemblyman.

The President.— I do not see its competency.

Mr. Stanchfield.— I call Mr. Graves to the stand.

Mr. Herrick.— If Mr. Fuller is here, is there any objection to having his testimony completed now?

Mr. Stanchfield.— Just a minute. I want to have Mr. Graves take the stand.

BENJAMIN B. GRAVES recalled.

Examination by Mr. Stanchfield:

Q. Do you produce, in response to my request, what purports to be a statement by the Governor, Albany, New York, July 30, 1913? A. I do.

Q. Is that the statement produced from the record which you say you kept in the Executive Chamber? A. Yes, sir.

Q. And this is the original of it? A. No. It is one of many copies on file.

Q. Is this a copy? A. It is one of many copies now on file in the office.

Q. Is this produced from the files in the Executive Chamber? A. Yes, it is.

Q. Do you say you have many other copies in the Executive Chamber besides this? A. I have several copies, I do not know just how many.

Q. Where is the original of it? A. I never saw the original copy.

Q. To whom was this statement made? A. It was one of the copies which was given out to the press at the time.

Q. Were you present at the time? A. No, I simply got copies the next day and put them in the files.

Q. Put them in the files, and this is from the files? A. That is from the files.

Mr. Stanchfield.— I will have that marked for identification.

(Paper marked Exhibit M-86 for identification).

Mr. Stanchfield.— That is all, Mr. Graves, now.

The President.— Any questions?

Mr. Marshall.— No questions.

Mr. Marshall.— May I look at that?

Mr. Stanchfield.— Yes.

Mr. Todd.— Spencer G. Prime, 2d.

The Clerk.— You do solemnly swear that the evidence which you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer, as Governor of this State, shall be the truth, the whole truth and nothing but the truth, so help you God.

The Witness.— I do.

The Clerk.— What is your full name?

The Witness.— Spencer G. Prime, 2d.

SPENCER G. PRIME, 2D, called as a witness in behalf of the Managers, having been first duly sworn in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Todd:

Q. Where do you reside? A. Upper Jay, Essex county, New York.

Q. You are an Assemblyman in the State of New York for the county of Essex? A. Yes, sir.

Q. How long have you occupied that office? A. This is my second year.

Q. You introduced in the Assembly two acts in relation to the building of highways in the counties of Essex and Warren during the regular session, did you not? A. Yes, sir.

Q. One of the acts was to reappropriate an unexpended balance of about $750,000 for the construction of highways in the counties of Essex and Warren, was it not? A. Well, approximately $733,000, somewheres along there.

Q. And the other act was to authorize the construction of certain highways in the counties of Essex and Warren? A. Two new State routes.

Q. The effect of these bills was to have these roads built at the expense of the State and not the expense of the counties of Essex and Warren?

Mr. Marshall.— I object to that. The bills will show for themselves. It is for the purpose of saving the reading of the bills.

Mr. Marshall.— Have the bills been put in evidence?

The President.— It is to save the reading of them.

Mr. Marshall.— If that is a short description of them, all right.

The President.— Of course it merely saves time. Do the bills provide for doing these roads entirely at the expense of the State?

The Witness.— The unexpended balance bill is a little different bill than the regular appropriation, the money coming from the State.

The President.— That is what we want.

The Witness.— The money coming from the State and not from the localities. The money is assigned to the county under the old $50,000,000 appropriation.

The President.— It was State money?

The Witness.—Yes, sir.

The President.— That had been assigned to your county?

The Witness.—Yes, sir.

Q. When these bills passed the Senate they were in the thirty-day class before the Governor, were they not? A. Yes, sir.

Q. And did you have occasion to visit the Governor in reference to his approval of these bills? A. I visited the Governor about two weeks before the bills were signed.

Q. Were you alone? A. No, sir.

Q. In whose company? A. Accompanied by Senator Emerson and a Mr. William Cameron of the Attorney-General's office.

Q. Where does Mr. Cameron reside? A. I think at Glens Falls, Warren county.

Q. And Senator Emerson is Senator James Emerson who represents your senatorial district at the present time? A. Yes, sir.

Q. Where did you see the Governor on this occasion? A. We saw him in the Executive Chamber.

Q. There was a conversation between the Governor on the one hand and you three gentlemen from Essex and Warren on the other? A. No conversation which I had other than to say hello. There was a conversation between Senator Emerson and the Governor.

Q. Will you state that conversation? A. When we came into the Executive Chamber the Governor was in the inner office and when he came out — we waited about three-quarters of an hour I should say, and when he came out he interviewed the reporters and after the interview Mr. Lemmeron who was one of the employees of the office brought us up before the Governor and I think Senator Emerson introduced him, and he said "Governor," he said, "we are down here on the Highway measures affecting the counties of Essex and Warren," and he said, "We are very anxious to get your signature to these bills," or something of that nature.

Q. What did the Governor say? A. And the Governor turned and said "Senator, you voted against my Direct Primaries Bill." The Senator said "Yes, Governor, but I have a copy of your bill in my pocket," and he then reached and brought out some paper and exhibited it to the Governor, and the Governor said "You had better read the bill." The Senator said to him, "I am going to read it, read it thoroughly so I can understand it."

"Go back home and read the bill — meaning the Direct Primary Bill — and come back on Friday or Saturday and tell me how you feel as to the measure."

He turned around then and spoke to Mr. Cameron and he said, "Arrange a meeting for me in Glens Falls," naming the date — whether it was Friday — it was some future date — a date anyway — saying he wished to speak in Glens Falls and wanted Mr. Cameron to get the hall and arrange the meeting for him.

If I remember aright, the Senator then said, "Governor, this bill is a bill which affects the people of the North," and he explained the merits of the bill and requested that the bill be signed, but just — Oh, he then said, the Governor said, "Well, I will

see you on Friday," and as we turned to come out of the Executive Chamber he made a statement, a remark to the effect that, "You for me, I for you," and we went out.

Q. How did you vote on the Direct Primary bill at the regular session? A. I didn't vote.

Q. How did you vote at the extraordinary session?

Mr. Marshall.— Same objection as before.

The President.— I do not see its competency.

Mr. Todd.— Do I understand that your Honor does not permit that?

The President.— I think it is not competent. Cross-examine.

Mr. Todd.— I am not through.

Q. These two bills were signed by the Governor, were they not, on the last day of thirty-day period, June 2nd? A. They were, sir.

Q. And became laws, and are now chapters 785 and 786, Laws of 1913? A. Yes.

Mr. Todd.—That is all.

Mr. Herrick.— Is that all?

Mr. Todd.— I am through with him.

Mr. Herrick.— You can go.

(Witness excused.)

Senator McClelland.— I would like to ask a question.

The President.— Senator McClelland.

Senator McClelland.— I would like to ask a question. Did the Governor take any action upon the bill after the words, "You for me and I for you?"

The Witness.— Why, do you mean whether that statement was made before the bill was signed?

Senator McClelland.— Repeat the question.

(The question was read by the stenographer as follows): "Did the Governor take any action upon the bill after the words 'You for me and I for you?'"

The Witness.— By action, he signed the bill. Is that what you mean?

Senator McClelland.— That is what I mean.

The President.— He signed after that. The bill had not been signed when you had that conversation.

The Witness.— The bill was signed on the 2d of June and this conversation was two weeks before that?

The President.— Yes.

Senator McClelland:

Q. What I want to find out is how much time there was after the remark was made and the bill was signed?

The Witness.— Two weeks.

Senator McClelland.— A week?

The Witness.— Two weeks, and I shouldn't be certain, perhaps more.

The President.— That is all.

By Mr. Hinman:

Q. Just a question. In the meantime as between the time that you had your talk which you have referred to and the time when the bill was signed had the Governor been up in your country and held a meeting? A. I am not certain as to that.

Q. You spoke of Mr. Cameron arranging — A. You mean in the county of Warren?

Q. Yes. A. He held a meeting in the county of Warren, I know that.

Q. And spoke there? A. Yes, sir.

Mr. Marshall.— We would not be able to finish with Mr. Fuller to-night so it might be as well not to put him on the stand now.

Mr. Kresel.— We had relied on Mr. Fuller for this afternoon. We haven't any other witness here now.

The President.— Well, this should not happen again. We will adjourn.

Senator Murtaugh.— Before court adjourns I want to call the court's attention to page 794 of the record, to the practice of the court stenographers when they fail to get the remarks of members of the court to insert such words as " inaudible remarks."

The President.— I will have to ask you to repeat that; unfortunately my hearing is not the very best.

Senator Murtaugh.— I want to call the attention of the court to the practice of the court stenographers in designating the remarks of the members of this court which they fail to hear, as " inaudible."

The President.— Yes, that is not proper. You mean those words " making inaudible remarks " ?

Senator Murtaugh.— Yes; I think it is undignified and very suggestive; and I wish to say further for myself, and I think there is no other member of this court that has any wish to conceal the reasons for a vote on the question and I think a remark on the record like that suggests that there might be some reason why the member failed to plainly and clearly state it.

The President.— Of course that was hardly intended.

Senator Murtaugh.— I wish to have the stenographers instructed that when the members in the rear of the room fail to make their remarks plain that they call their attention to it.

The President.— The stenographers will do that.

Senator Murtaugh.— I would also like, I believe it is too late now, but I would like not to have it left on the record if it is not too late.

The President.— You mean this characterization of your own remarks.

Senator Murtaugh.— I would like to have the word "inaudible" taken from the record and while it is too late to have the printed copy changed at that page I would like to have here inserted the remarks which I made at that time:

"Friday I voted in the negative on a ruling of the President, as I thought the evidence pertaining to the intention of the witness Cox was inadmissible, that the intent of the witness should be determined by this court from the acts and statements of the witness at the time the transaction took place and the witness should not be permitted to testify in a proceeding of this nature what was his concealed intention as to how the respondent should spend the contribution."

I make this statement in order that the record may show the reason for my vote.

Mr. Brackett.— I would be glad if the court would adopt some method by which the counsel who deliver an argument could submit any verbal corrections so that the record will be printed for the next day's use?

Mr. Brackett.— It can't be done so soon.

The President.— That is a difficulty inherent in the condition of affairs.

Mr. Brackett.— It might be done better when the final record was made up.

Mr. Herrick.— I was going to suggest that the Court make an order that before the final report is made of this trial, that argument of counsel be submitted to them for revision.

The President.— By that you mean at the conclusion?

Mr. Herrick.— Yes.

The President.— Yes, we will have — that will have to be taken care of after the final disposition of the case; and before the record is made up for permanent filing, and then whatever suggestions may occur the President will be very glad to hear them.

Mr. Kresel.— If your Honor please, may I call a witness just to identify papers?

The President.— Yes.

Mr. Kresel.— Mr. Becannon.

The Clerk.— You do solemnly swear that the evidence you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer as Governor of this State, shall be the truth, the whole truth and nothing but the truth, so help you God.

Mr. Becannon.— I do.

The Clerk.— What is your full name?

Mr. Becannon.— Charles M. Becannon.

CHARLES M. BECANNON, a witness called in behalf of the Managers, having been first duly sworn in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Kresel:

Q. Mr. Becannon, are you an employee of the Garfield National Bank in the city of New York? A. I am, sir.

Q. Have you, pursuant to a subpoena served upon your bank, produced a transcript of the account of H. J. Reilly, Jr., with your bank from the 1st of July, 1912, to date? A. I have, sir.

Q. Is that a correct transcript (indicating)? A. It is.

Q. Now, please see if that is the paper (counsel passes paper to witness)? A. (After examining) It is.

The President.—Yes.

(The paper offered for identification was received and marked Exhibit M-86 for identification.)

Mr. Kresel.— That is all.

The President.— Is that all? Any cross?

Mr. Hinman.— Is there any objection to my seeing it before it is offered in evidence?

Mr. Kresel.— I haven't offered it in evidence.

Mr. Hinman.— I knew that. Is there any objection to my seeing it?

Mr. Kresel.— Let me look it over first. I will show it to you in the morning.

The President.— Is there anything else, gentlemen, before the Court adjourns Court?

Mr. Kresel.— Nothing else.

Mr. Todd.— I would like to offer in evidence, in connection with the proof under Article VII the message of the Governor to the Assembly or to the Legislature on April 10, 1913, urging the passage of the Direct Primary bill, and also the message of the Governor to the Legislature at its extraordinary session on June 16, 1913.

(The message of the Governor of April 10, 1913, was received in evidence and marked Exhibit M-87.)

(The message of the Governor submitted at the extraordinary session on June 16, 1913, was received in evidence and marked Exhibit M-88.)

Senator McClelland.— Mr. President, if I would be in order.

The President.— Senator McClelland.

Senator McClelland.— It appears from the daily record of the proceedings of this Court that a roll call of those who are in attendance at the opening of Court is had every morning, and that appears to be the only roll call, and will probably be the record of the attendance of this Court during the session. Those who might come in after the roll call might attend during the two sessions, say, coming in at half past ten and sit here until half past twelve and then the recess occurring, convening at two, and sitting from two until six or such time as might be consumed in the business of the afternoon. Consequently, the record as it is now kept does not in any way indicate the attendance of the members of this Court during the balance of the day.

The President.— Senator McClelland, may I say this: The Clerk has already been directed, as each member of the Senate comes in subsequent to the original roll call to note their presence. And so, on the contrary, those that the Clerk sees appear in the record as if they had been in at the commencement instead of not appearing at all. Of course, the Presiding Officer is not familiar with the Senators, but he has directed it, and I think the Clerk has observed that correction, has he not?

The Clerk.— Yes.

Senator McClelland.— I am very glad that that is so, because I know that it is not generally understood, and it was therefore the reason why I asked the liberty at this moment to call the attention of the President to it.

The President.— I am inclined to think that the late members get credit to which they are not entitled and I hope they will not presume upon that to continue late, but to be prompt.

Senator McClelland.— I trust that your Honor will not include your humble servant in that characterization.

The Crier.— All witnesses are excused until to-morrow morning at 10 o'clock.

The President.— Adjourn Court, Crier.

The Crier.— Hear ye, hear ye, hear ye, all persons having any further business before this Court of Impeachment held in and for the State of New York, may depart hence and appear here at 10 o'clock, to which time this Court now stands adjourned.

Senator Murtaugh.— Mr. President.

The President.— Senator Murtaugh.

Senator Murtaugh.— The orderly in charge of the records requested me to ask the Court to instruct the members to leave the books on their desks at the close of the session each evening, so that the minutes of the day preceding will be placed on the records in the morning.

The President.— That may be, but some members, Senator, may want to read over the record during the evening.

Senator Murtaugh.— That is what was done in previous proceedings and it made it very confusing for the orderlies to have the minutes in the books.

The President.— It would be more convenient, but I think that would have to be referred to the individual members of the Court.

Mr. Brackett.— That can be made this way if the Court please.

Senator Murtaugh.— The only thing is, your Honor, that if the records are placed upon the desks and not in the files, they are liable to be taken from the desks.

The President.— Couldn't this be done: If the members of the Court take the testimony with them in the evening, they may return their records in the morning and place them on their desks, and then the Clerk could go around and add to the last day's proceedings so that any gentleman who wishes to take his record home, if he will return it to his desk sufficiently early why then the Clerk will—

Mr. Brackett (Interrupting) — I suggest this, if the Court please: that the filed report leave the addition of the day before— the testimony of the day before — loose on the desk in front of each Judge and that at the noon recess they all be left and he then lace them in.

Mr. Marshall.— That is a good idea.

The President.— It seems to me that is a good suggestion. The Court is adjourned.

Thereupon, at 5:35 o'clock P. M. an adjournment was taken until Tuesday, September 30, 1913, at 10 o'clock A. M.

MANAGERS' EXHIBIT M-77.

STATE OF NEW YORK.

2d Rdg. 703. Nos. 1101, 2139. Int. 1046.

IN ASSEMBLY,

February 13, 1913.

Introduced by Mr. Sweet — read once and referred to the Committee on Ways and Means — reported from said committee with amendments, ordered reprinted as amended and placed on the order of second reading.

AN ACT

To provide for the construction of a bridge by the state over a portion of the Oswego river and the barge canal at Minetto, in the county of Oswego, to connect with a bridge to be built by local authorities over a portion of such river, and making an appropriation therefor.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The superintendent of public works is hereby authorized and directed to construct a bridge and westerly approach thereto over a portion of the Oswego river and over the barge canal, in two sections, whereof the first section with its westerly approach, as hereinafter defined, shall be a reinforced concrete arch bridge, and the second section, as hereinafter defined, shall be a bascule or convertible bridge. Such bridge shall extend from a point, to be determined by the county and town superintendents of highways and approved by the superintendent of public works, upon the west bank of the Oswego river at a point about three hundred feet south of Benson avenue in Minetto, in the town of Oswego, in the county of Oswego, easterly to the westerly line of the barge canal channel in such river, which portion shall constitute the first section of said bridge, and thence continuing easterly over the barge canal being the second section of such bridge, to connect with a bridge to be built by the towns of Volney and Oswego as hereinafter provided. No part of the easterly

abutment or pier of the bridge to be built by the superintendent of public works shall be west of the face of the approach wall of the barge canal lock number five, Oswego canal. An abutment or pier shall be constructed by the superintendent of public works at the easterly end of the first section and westerly end of the second section of such bridge. Such bridge shall be at the elevation of and connect with the bridge to be built by the towns of Volney and Oswego in such manner as to form, together with such town bridge, one continuous bridge over said canal and river. The first and second sections of this bridge above referred to shall, when constructed, be under the supervision, care and control of the state in the same manner and to the same extent as bridges over the barge canal. The said towns of Volney and Oswego may construct, with moneys to be provided for in such towns in the manner prescribed by law for the construction of other bridges whereof the expense is to be borne by two or more towns, a reinforced concrete arch bridge over that portion of the Oswego river which lies between the easterly terminus of such state bridge and the easterly bank of such river, in the town of Volney; and the state bridge hereby authorized to be constructed may, if the superintendent of public works so determines, and if the town boards, respectively, of the towns of Volney and Oswego consent thereto, be supported at the easterly end of the second section by the pier or abutment to be constructed by the said towns at the westerly end of said town bridge; and the town boards of said towns are authorized to consent to the use of said pier by the state for the purpose aforesaid. The plans and specifications for the construction of said town bridge shall be submitted to the state engineer and surveyor for his approval, and until such approval no part of the moneys hereinafter appropriated for the construction of such state bridge shall be available. After such approval, the first section of such state bridge shall be constructed in such manner as to conform as nearly as may be in kind and quality with such town bridge. The state bridge, including both sections, provided for in this act, shall be constructed according to plans and specifications to be furnished by the state engineer and surveyor.

§ 2. For the purpose of constructing the state bridge provided for in section one of this act, the sum of fifty thousand dollars ($50,000), or so much thereof as may be necessary, is hereby appropriated, to be paid out by the state treasurer upon the warrant of the comptroller to the order of the superintendent of public works, upon vouchers approved by him; but no part of the money hereby appropriated shall become available, except for plans and specifications and advertising for bids, until a contract or contracts for the construction of such state bridge within the amount of the appropriation shall have been entered into by the superintendent of public works.

§ 3. This act shall take effect immediately.

MANAGERS' EXHIBIT M–78.

State of New York.

No. 2373. Int. 2032.

In Assembly.

March 27, 1913.

Introduced by Mr. Prime — read once and referred to the Committee on Internal Affairs.

An Act

To amend the highway law, in relation to additional state routes in the counties of Essex and Warren.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section one hundred and twenty of chapter thirty of the laws of nineteen hundred and nine, entitled "An act relating to highways, constituting chapter twenty-five of the consolidated laws," is hereby amended by inserting therein three new subdivisions, to read as follows:

Route 22-a. Commencing at a point at the end of county highway number sixteen hundred and fifty-one in the village of

Newman, and running thence northerly through Wilmington Notch and High Falls, thence easterly at or near Upper Jay to connect with route number twenty-two, Essex county.

Route 22-b. Commencing at a point on county highway number eight hundred and ninety-one outside of the village of Ticonderoga and extending westerly through the towns of Ticonderoga and Schroon through the village of Chilson, to a point on route number twenty-two at or near Severance hill, being within the boundaries of the county of Essex.

Route 22-c. Commencing at a point on county highway number ten hundred and twenty-three, and running thence northerly and westerly to Pottersville on the easterly side of the Schroon river, terminating at route number twenty-two, all within the boundaries of Warren county.

§ 2. This act shall take effect immediately.

MANAGERS' EXHIBIT M–79.

STATE OF NEW YORK.

No. 2547. Int. 2143.

IN ASSEMBLY,

April 12, 1913.

Introduced by Mr. Prime — (by unanimous consent)— read once and referred to the Committee on Ways and Means.

AN ACT

To reappropriate for the improvement of new state routes in the counties of Essex and Warren the unexpended balances of moneys appropriated by chapter one hundred and thirty-three of the laws of nineteen hundred and eleven.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The unexpended balances of moneys appropriated by chapter one hundred and thirty-three of the laws of nineteen hundred and eleven, for the construction and improvement of

certain state routes as then existing, or the just proportion thereof available for the construction or improvement of such routes within the counties of Essex and Warren, are hereby reappropriated for the construction and improvement of any new state routes created or to be created within the counties of Essex and Warren by act of the legislature at the session of nineteen hundred and thirteen, payable out of moneys realized from bonds issued in accordance with the provisions of chapter four hundred and sixty-nine of the laws of nineteen hundred and six, as amended by chapter seven hundred and eighteen of the laws of nineteen hundred and seven; such moneys to be applied to the several new routes in such counties in such manner and in such proportion as the state commission of highways may determine, excepting that as between the two counties the apportionment shall be on a fair and equitable basis, computed according to the relative mileage of such new routes in both counties. The moneys hereby appropriated shall be expended according to the provisions of articles six of the highway law.

§ 2. This act shall take effect immediately.

SENATE CHAMBER,

ALBANY, N. Y., *September* 30, 1912.

Pursuant to adjournment the Court convened at 10 a. m.

PRESENT:

Hon. EDGAR M. CULLEN, Presiding Judge,
and
THE JUDGES OF THE COURT OF APPEALS,
and
THE SENATORS OF THE STATE OF NEW YORK.

APPEARANCES:

THE MANAGERS:
Same as heretofore.

Counsel for the Managers:
Same as heretofore.

Counsel for the Respondent:
Same as heretofore.

The President.— Call the roll.

The Clerk thereupon called the roll and found a quorum present with the following absentees:

Judge Collin.
Senator Fitzgerald.
Judge Gray.

The President.— Open Court, crier.

The Crier.— Hear ye, hear ye, hear ye, all persons having any business before this Court of Impeachment held in and for the State of New York may now draw near, give their attendance and they will be heard.

The President.— Now, gentlemen.

Mr. Kresel.— If your Honor please, Mr. Fuller is here with his books May we finish with him?

The President.— Just take your own course.

Mr. Kresel.— Mr. Fuller.

MELVILLE B. FULLER, a witness called on behalf of the Managers, recalled for further examination, having been previously sworn, testified as follows:

Mr. Kresel.— I understood the counsel for the respondent desired to cross-examine.

Mr. Hinman.— Not until you are through.

Mr. Kresel.— Well, for the present I am through.

Mr. Hinman.— All right.

Mr. Marshall.— We are through.

The President.— Any cross.

Mr. Hinman.— Nothing further.

Mr. Kresel.— Well now, just a minute.

Mr. Stanchfield.— Will your Honor allow me to have this witness step aside for a moment in order to make some formal proof?

The President.— Yes.

Mr. Stanchfield.— Mr. Platt, will you please take the witness stand.

CHESTER C. PLATT, a witness called on behalf of the Managers, recalled for further direct testimony having been previously sworn, testified as follows:

Direct examination by Mr. Stanchfield:

Q. Mr. Platt, in August and September of this year, 1913 —

The President.— Mr. Stanchfield, if you please, speak very loud.

Q. In August and September of the current year you have been acting as Secretary to the Governor, have you not? A. Yes.

The President.— Can you speak a good deal louder too, witness, please.

Q. I hand you, Mr. Platt, a letter dated September 15, 1913, and ask you whether or no you wrote that letter? (Counsel passes paper to witness.) A. (Witness examines paper.)

Q. Can't you recognize your signature? A. That is my signature, but I don't think that I dictated the letter.

Q. Well, is it your signature? A. That is my signature.

The President.— Did you dictate that letter? Is it a typewritten letter?

The Witness.— It is a typewritten letter.

By the President:

Q. And did you dictate that, and is that your signature? A. I did not dictate it, but I signed it.

Q. Did you read it when you did sign it, or had you read it before you signed it? You knew what you were signing, in other words, did you? A. I presume I read that, but I don't know anything about the subjects mentioned in the letter. It was dictated by some other person in our office, signed by myself.

By Mr. Stanchfield:

Q. Let me get your attitude of mind. Did you, or did you not, know what you signed when you wrote the letter? A. I did not write the letter.

Q. When you signed the letter, did you know the contents of what you were signing? A. I signed so many letters —

Q. Answer my question, please? A. I was going to answer it.

Q. No. You were going to say about signing many letters. That is not the question. The question is whether you knew the contents of the paper that you hold in your hand, at the time when you signed it? A. I don't know whether I did or not. I am not sure whether I read it or not when I signed it. It is to a person whom I do not know.

The President.—You have answered the question. If the counsel wants more he will ask for it.

Mr. Stanchfield.— I beg your pardon?

The President.— I say if you want more, you will ask for it.

By Mr. Stanchfield:

Q. If to a person whom you do not know, it is pretty familiarly addressed, is it not? A. No, sir. It is addressed in a formal way.

Q. Is it your notion of familiarity in writing to a man that you don't know, that it is formal to address him as "Dear Mr.?" A. I did not dictate this letter.

Q. No; that is not the question. That letter is addressed to "Dear Mr.," isn't it? A. No, sir; it is not. It is addressed to "Dear Dr. Brown."

Q. "Dear Doctor?" A. Yes, sir.

Q. Do you call that a formal address to a man that you do not know? A. It is quite common. I have signed correspondence in that way.

Q. Did you see that man to whom that letter was written in Albany during the past summer? A. I do not remember that I did.

Q. Would you know him now if you saw him? A. I do not know whether I have ever met this Dr. Brown or not.

Q. Would you know him now if you were to see him? A. If I could see the man I might remember that I had met him.

Q. The name then does not at the moment convey anything to you? A. No.

Q. You use the word in there "Enclosure," do you not? A. The word "enclosure" is in the letter.

Q. Do you know what that word "enclosure" referred to? A. No, I do not.

Q. Although you signed the letter you do not know what that word meant, is that right? A. I do not know what that enclosure was mentioned there. I know the meaning of the word, of course.

Q. But you do not know what the enclosure was? A. No.

Mr. Stanchfield.— I will have that marked for identification.

Mr. Herrick.— May we look at it?

Mr. Stanchfield.— No, not now.

Paper marked Exhibit M-89 for identification.

Mr. Stanchfield.— That is all for the moment, Mr. Platt.

MELVILLE B. FULLER, recalled:

Direct examination by Mr. Kresel:

Q. Mr. Fuller, have you before you the letter of Harris & Fuller containing the account of William Sulzer who is now Governor? A. I have.

Q. Will you please turn to that account? A. Yes, sir.

Q. What folio in your ledger do you find that account in? A. Page 612.

Q. And when does it appear that account was opened? A. March 18, 1910.

Q. Now, on the 18th of March, 1910, when this account was opened, what was the first transaction for the account? A. We received 100 Pittsburg, Cincinnati, Chicago & St. Louis stock.

Q. From Mr. Sulzer? A. From Mr. Sulzer.

Q. And did you sell it for his account? A. We did.

Q. On the same day? A. Probably, although it did not go out until the 21st.

Q. You got it on what day? A. The 18th.

Q. And your book shows then that on the 21st, at any rate, of March, was it? A. March, 1910.

Q. That stock was sold for the account and the proceeds thereof paid over to Mr. Sulzer? A. That is right.

Q. And then there was one other transaction in May, was there not? A. May 17, 1910.

Q. And what was that transaction? A. We received 100 shares of the same stock from Mr. Sulzer.

Q. And did you likewise sell it for him? A. We did.

Q. And when did you pay him the proceeds of that sale? A. May 17th, the same day.

Q. Now, as far as your ledger account shows then, was the account closed at that time? A. The account was closed May 17, 1910.

Q. Do you recall, Mr. Fuller, with whom in your firm those two transactions were had? A. I do not.

Q. In March, 1910, you knew Mr. Sulzer? A. I did.

Q. You had known him for a number of years prior to that time? A. I had.

Q. And hadn't he had dealings with your firm before that time? A. He had.

Q. Had he had a running account with your firm prior to March, 1910? A. He had.

Q. And some time before that date, that account had been closed? A. Yes.

Q. Now, then, the next transaction that your firm had with Mr. Sulzer was on June 17, 1910, wasn't it? A. No, sir.

Q. June 27th? A. Yes, sir.

Q. June 27th, 1910? A. Yes, sir.

Q. Now, before we enter into an analysis of that account, Mr. Fuller, I want to ask you whether it is a fact that the dates of entries in your books is the date when the transaction is completed? A. Yes.

Q. That is to say, if you buy 100 shares of stock for a customer on the 20th of October, you don't get the stock until the 21st of October, is that correct? A. I get the stock the next business day.

Q. The next business day? A. Yes.

Q. And the entry in the account of your customer for whom you buy that stock is made as of the date when you get the stock? A. That is correct.

By the President:

Q. And also, when you sell the stock, as to your getting the money? A. Yes, sir.

By Mr. Kresel:

Q. Is it likewise true, Mr. Fuller, that the first and original entry of the purchase and sale of stocks for your customers is made in the purchase and sales book? A. The first entry is made when I purchase it.

Q. That is it; and the first entry, I mean the first book that it is made in is the purchase and sales book? A. In the office, yes.

Q. In your office? A. Yes.

Q. And from the purchase and sales book the entries are posted into the blotter, are they not? A. Yes, sir.

Q. And from the blotter into the ledger? A. Yes, sir.

Q. Was it the custom in your firm, Mr. Fuller, to make entries of the numbers of the certificates of stock which you bought or sold? A. Always.

Q. And those appear in the blotter, do they not? A. They do.

By the President:

Q. That is where they first appear in your books? A. When I receive them I receive them on my blotter, and there all entries are made for my information.

By Mr. Kresel:

Q. When you receive stock from a customer, either as security or for the purpose of selling the stock, is there an entry made of the receipt of that stock on the blotter? A. Yes, sir.

Q. Now, this account was opened then, on June 27, 1910? A. Yes, sir.

Q. Which was the first transaction in the account? A. I loaned Governor Sulzer $6,000 on 100 shares of CCC, the cash value of which that day was $8,200.

Q. Do you say, Mr. Fuller, that you received those 100 shares of Big Four stock — isn't it Big Four it is called? A. Yes, sir.

Q. On the 27th day of June, is that the very day that you received it? A. On the 27th of June, 1910.

Q. Well, on the same day, did you buy any Big Four for the account of Mr. Sulzer? A. We did.

Q. How much did you buy for him? A. 100 shares.

Q. So that we have the transaction this way now, is it not: He came in on the 27th of June, he handed you a certificate of 100 shares of Big Four; you gave him $6,000, at the same time he directed you to buy for him 100 shares of Big Four, and you bought it? A. That is right. It came in the next day.

Q. The stock that you bought came in the next day? A. Yes, sir; the 28th.

Q. And that is the reason why it was entered in the account under date of the 28th of June? A. That is right.

Q. You bought 100 shares of Big Four at 80, did you not? A. We did.

Q. And you paid out for the account of Mr. Sulzer, then, $8,012.50? A. No, sir.

Q. How much did you pay out? A. We paid out $8,000, and charged him $12.50.

Q. Very well. Then the amount with which the account was charged, we will put it that way, was $8,012.50? A. That is right.

Q. You had also given him $6,000? A. That is right.

Q. So that you had laid out altogether $14,012.50 for his account, had you not? A. That is right.

Q. As against that, you had 200 shares of Big Four, is that correct? A. Yes, sir.

Q. You say that on the 27th of June, when Mr. Sulzer brought in the 100 shares of Big Four it was worth 82? A. Yes, sir.

Q. The 100 shares that you bought for him, however, you got at 80? A. That might have been due to a fluctuation in the value that day.

Q. I have no doubt it was. Now, will you please turn to your blotter and to the entry therein showing the receipt of the 100 shares of stock for Mr. Sulzer?

The Witness (after examining books).— I am afraid that these books only go back to the beginning of the account that the Frawley Committee asked for, January 1, 1912.

Q. You mean that you have not here with you the blotters antedating January, 1912? A. It appears not.

Q. Of course you were asked to produce them here, were you not? A. I turned the subpoena over to my office and my clerk I supposed had the books.

Q. Is there any doubt but that those blotters are in existence? A. Absolutely none.

Q. You have them in your office? A. Positively.

Q. What I wanted to find out, if I could, was the number of the certificate which Mr. Sulzer handed over to you on the 27th of June, 1910? A. I can give that to you.

Q. Have you that with you? A. I have a memorandum that I had prepared.

Q. Well, will you give me that, please? A. On what date, please.

Q. June 27, 1910? A. (Witness examines paper) Certificate No. 24427.

Q. Any serial ledger? A. No, sir.

Q. Now, did Mr. Sulzer personally bring this 100 shares of stock in to you? A. I couldn't state.

Q. Do you remember to whom he spoke when he came there, whether to you or to one of your partners? A. I do not.

Q. Have you any personal recollection at all as to the opening of this account? A. It was referred to me.

Q. And have you any recollection of having any conversation with Mr. Sulzer at that time? A. No.

Q. When an order is given to a customer to buy stock is that order written out? A. Not always.

Q. What is the general custom in your office with regard to that? A. We might receive an order over the telephone, over our private wires; a customer might give it verbally to my partner.

Q. And when given in whatever manner given, is there not an order written out in your office as a record to be kept? A. Yes, sir.

Q. Have you with you those order slips referring to this account? A. No, I have not.

Q. Now, when you deliver stock to a customer do you take a receipt from the customer for that stock? A. We do.

Q. Do you know, Mr. Fuller, what the market value of the Big Four stock was on June 28, 1910? A. I do.

Q. What was it? A. 80.

Q. Was that the asking price or the bid price? A. It was the price at which we bought 100 shares of stock.

Q. On the 28th? A. No, the 27th, I beg your pardon.

Q. I am speaking now of the 28th? A. I don't know.

Q. You don't know? A. No, sir.

Mr. Kresel.—Your Honor, if you will pardon us for a moment, until we get some books. (Producing copies of the Commercial and Financial Chronicle.)

The President.— Maybe the other side will admit the quotations that you want.

Mr. Marshall.—We will concede that, and we will permit counsel to prepare a statement from the Chronicle as they appear there. We concede the accuracy of the book, and the counsel need not spend any time, but may prepare a schedule, and we will verify it.

Q. Mr. Fuller, the Commercial and Financial Chronicle is a publication which is the standard for market values on the Exchange?

Mr. Marshall.—We concede that.

The President.— He concedes that, Mr. Kresel. You can read from that book whatever was the quotation of that stock the day to which you refer.

Q. According to the Commercial and Financial Chronicle, Big Four stock on the 28th of June was 78?

The President.—You can read it. You need not ask him about it. You may read it as being the fact.

Q. On July 7, 1910, Big Four stock was 72. At 72, Mr. Fuller, the value of the security that you held on July 7th was $14,400, was it not? A.. Correct.

Q. You had advanced for the account $14,012.50? A. That is right.

Q. Not including interest? A. No.

Q. So that the margin on that account on the 7th of July was some $387.50, was it not? A. The date again, please?

Q. July 7, 1910.

The President.— It is the difference between those two amounts. A. $387.50.

By Mr. Kresel:

Q. Less any interest that might have accrued on the account, is that not correct? Without stopping to consider how much it was. I just want to bring out the fact that interest was to be deducted from that? A. About six days.

Q. Six days' interest? A. Yes, sir.

Q. Now then, on July 9th this Big Four stock was selling at 70, having dropped from 80 to 70 between the 21st of June and the 9th of July. On that day the 200 shares of stock were worth only $14,000, were they not? A. Yes, sir.

Q. And you had advanced $14,012.50, plus interest? A. Yes, sir.

Q. So that the margin was absolutely wiped out on that day, was it not? A. Yes, sir.

Q. Did you communicate with Mr. Sulzer at that time with reference to putting up some margin? A. We did.

Q. Have you copies of the letters here? A. I have.

Q. Please produce them. A. I had my bookkeeper here but I sent him back on the boat last night.

The President.— The crier will help you with the books, if you ask him for assistance at any time.

By Mr. Kresel:

Q. Now, will you turn to that letter? A. What date, please?

Q. On or about July 9, 1910? A. (after examining) On July 6th is a letter.

Q. You have produced here, Mr. Fuller, a copy of the letter written to Mr. Sulzer on the 6th of July, 1910? A. That is right.

Mr. Kresel.— I offer that in evidence. Gentlemen, I don't suppose you have the original.

Mr. Marshall.— We have not.

Mr. Kresel.— This letter reads as follows:

"July 6, 1910.

"Hon. William Sulzer, *New York.*

"Dear Sir.— Your account has been in bad shape for the past week, and you have not responded to our calls for margin. At to-day's price it is short $1,000 of the required amount, and we beg to request you to make a deposit of this sum with us to-morrow.

"Yours very truly,

"Harris & Fuller."

Q. What was the required amount of margin, Mr. Fuller? A. 10 per cent at least.

Q. 10 per cent? A. Yes.

Q. Now, does that mean 10 per cent on the par value or the actual value? A. On the par value.

Q. Par value? A. Yes, sir.

Q. That is to say, for every 100 shares of stock the required margin was $1,000? A. Yes.

Q. Now, may I turn, with your permisson, to the letter ahead of this which I see you have marked? A. I would like to look at it.

(Counsel passes book to witness and witness examines the same.)

Q. Prior to July 6th when had you written to Mr. Sulzer about his account? A. June 29, 1910.

Q. June 29, that is just two days after it was opened. Will you read that, please, into the record? A. (Reading.)

> At the closing prices to-night your account is short $1,000 of the required margin. Kindly deposit a check to this amount with us and oblige,
>
> "Yours very truly,
>
> "HARRIS & FULLER."

Q. Now, then, to go back one more. Did you write him also on the 28th of June? (After examining book.) A. We did.

Q. Now, what did you write him then? A. (Reading) "Your note of June 4th, 1910, in reference to your reply — in reference to your nephew received. I regret to say through some oversight or carelessness in our office that this letter was only handed to me to-day. I trust you will pardon this seeming inattention for that reason. Business in the brokerage line has never been worse than the past few months, which fact I stated when Mr. Lowry — to Mr. Lowry when he called. Also that we were reducing our force in anticipation of a very dull period, and for the present I could not see my way clear to engage his services."

Q. Well, that was with reference to something that had nothing to do with the account?

Senator Healy.— Mr. President.

The President.— Senator Healy.

Senator Healy.— I would like to ask that the stenographer be instructed to read that communication that was taken down. We can't hear here.

Mr. Kresel.— This last communication, may I state, for the benefit of the Senator, was not with reference —

The President.— It was with reference to employing some body that the respondent had recommended.

Mr. Kresel.— Right.

The President.— It really had nothing to do with this case.

Mr. Kresel.— Your Honor knows that I have had no opportunity to see these letters. Therefore your Honor will pardon me for having that letter read. It had nothing to do with it.

Q. Now, then, Mr. Fuller, after your communication to Mr. Sulzer of the 28th of June — 29th of June, asking for additional margin, did you get it? A. (After examining book.) Yes.

Q. Did you get it before the 6th of July?

The President.— Let him tell when he got it.

The Witness.— July 14th.

Q. Well, we will come to that part of it, but prior to the 6th of July you didn't get any margin? A. No.

Q. Did you get any reply to your letter of the 29th of June? A. (After examining paper) No.

Q. Did you hear from Mr. Sulzer, either by letter or telegram or telephone? A. Not that I know of.

Q. Now, did you get any reply to your communication of the 6th of July? A. On the 14th of July, yes.

Q. Now before that? A. No.

Q. Now, on the 14th of July, what did you get from Mr. Sulzer? A. 200 shares of CCC stock.

Q. Before we come to that, Mr. Fuller, can you tell us how the certificate of 100 shares of Big Four, which Mr. Sulzer brought in on the 27th of June, was made out? A. In his name.

Q. In his name? A. Yes.

Q. William Sulzer? A. Yes.

Q. And it had the number that you gave us? A. Yes.

Q. Now then, you say that on the 14th of July, he brought in 200 additional Big Four? A. Yes.

Q. And have you the numbers of those certificates? A. I have.

Q. And what are they, please? A. C24405-6.

Q. And were those made out in Mr. Sulzer's name? A. I believe they were.

Q. And what did Mr. Sulzer say in handing over this stock? A. I could not say.

Q. Did you see him? A. No.

Q. Do you know who, in your firm, spoke to him on this occasion? A. I do not.

Q. Now, the $6,000 that you gave Mr. Sulzer on the 28th of June, was that given by check? A. It was.

Q. Have you that check? A. I have.

Q. May I see it, please? A. Yes. (Producing check).

Mr. Kresel.— I offer that check in evidence.

Check offered in evidence, admitted and marked Exhibit M-90.

Mr. Kresel.— This check is drawn on the 27th of June, 1910, on the Gallatin National Bank "Pay to the order of William Sulzer $6,000." Signed "Harris & Fuller." Indorsed, "For deposit, William Sulzer," and deposited in the Carnegie Trust Company June 27th, 1910.

Q. Now, on the 14th of July, 1910, when Mr. Sulzer brought in the 200 additional Big Four, did you give him any money? A. Prior to that date?

Q. On that date? A. No.

Q. Didn't you give him $7,000? A. Yes, sir. I beg your pardon, we did.

Q. Was that given by check? A. Yes.

Q. Have you that? A. My ledger states, July 14th, 200 CCC received, $7,000. I do not seem to have the check here.

Q. Well, according to the ledger, it would indicate that on that day, when he brought the 200 shares of Big Four, you gave him $7,000, would it not? A. Yes, sir.

Q. Have you your check stubs covering the period of the 14th of July, 1910? A. I think I have.

Q. Will you see if you have the stub of any check drawn to Mr. Sulzer for $7,000? I think they are here, are they not? A. What date is that that you want, please?

Q. That is July 14, 1910, Mr. Fuller? A. I have the stub.

The President.— Is there any objection to reading the stub in lieu of the check?

Mr. Marshall.— No, your Honor, no objection.

Mr. Kresel.— This stub is No. 187,651, dated July 14, 1910, to the order of William Sulzer, debtor account, debit account, $7,000.

By Mr. Kresel:

Q. On the 19th of July, did you give Mr. Sulzer any further money? A. We did.

Q. How much? A. $500.

Q. Have you the check for that? A. I have. (Producing check.)

Mr. Kresel.— I offer that in evidence.

Mr. Herrick.— No objection.

The check offered in evidence was received and marked Exhibit M-91.

Mr. Kresel.—This check is No. 187,726, dated July 19, 1910, drawn on the Gallatin National Bank? "Pay to the order of William Sulzer, $500." Signed "Harris & Fuller. Endorsed "For deposit, William Sulzer," and deposited in the Carnegie Trust Company.

By Mr. Kresel:

Q. Now, on the 14th of July, 1910, Mr. Fuller, you had advanced for the account of Mr. Sulzer $21,012.50, not including interest, is that correct. A. That is right.

Q. And you had against that 400 shares of Big Four? A. Yes, sir.

Q. Which at the quoted market price on the 14th of July, 74½, was worth $29,800? A. Yes.

Q. So that his margin then was $8,800? A. Yes.

Q. Which was the required amount and more? A. Yes.

Q. That is correct? A. Yes.

Q. Now, by the 26th of July, 1910, the stock had dropped to 65, isn't that correct? A. I don't know.

The President.— You have got the quotation. Counsel said you might read it.

Q. It had dropped since June 27th, 1910, to July 26, which was just about a month, 15 points?

Mr. Marshall.— No.

Mr. Kresel.— 15 points.

Mr. Marshall.— From what date?

Mr. Kresel.— From the 27th of June to the 26th of July.

Mr. Kresel.— You had paid out for the account by the 26th of July, $21,512.50, is that correct? A. I would have to figure it up to give it to you.

Q. There was 6 and 7, that is 13 —

Mr. Marshall.— Wouldn't we save time, your Honor, by having the account put in evidence and we could make our own computations without wasting time in computations here?

Mr. Kresel.— No, your Honor. The account if it were put in evidence —

The President.— If you would read from your quotation book just what you want, you need not ask him anything about the market value. They have agreed that that quotations book may be considered in evidence and that you may read it.

Mr. Kresel.— I have not asked him anything about the quotation value. I was just trying to get from him how the account stood at that time.

The President.— We do not want to take the time from him to make up an account.

The Witness.—At what date. Do you want it? I have it, with every change that was made in the account.

Q. Look at July 26th then? A. July 26th Governor Sulzer had on deposit with us 400 shares of CCC stock. His debit balance was $22,664. The market value was $28,800, that day, leaving an equity of $6,136.

Q. Now, on the 26th of September you made a payment of $1,000, did you? A. On the 26th of September we gave him a check for $1,000.

Q. Have you that check? A. I have.

Mr. Kresel.— I offer it in evidence.

The check offered in evidence received and marked Exhibit M-92.

Mr. Kresel.— The check is dated September 26, 1910, drawn on the Gallatin National Bank. Pay to the order of William Sulzer, $1,000. Harris & Fuller. Endorsed for deposit, William Sulzer, and deposited in the Carnegie Trust Company.

Q. Now, Mr. Fuller, on the 11th of November, 1910, you still had 400 shares of Big Four in the account, did you not? A. No.

Q. What did you have? A. 200 shares of Big Four and 20 shares of American Smelters.

Q. When did you get the Smelters? A. November 11, 1910.

Q. Well, I am talking of that same day, before you got the Smelters. Now, you had 400 shares of Big Four, before you got the Smelters, didn't you? A. Oh, yes.

Q. And the stock being worth, Big Four, at that time, 63, is it a fact that 400 shares of Big Four was then worth $25,200? A. Yes.

Q. Now, at that time, you had paid him $22,512.50, is that not the fact? A. Yes.

Q. So that your margin was only about $2,700? A. Yes.

Q. Thereupon you say that he brought in 200 shares of Smelters? A. Right.

Q. And Smelters on that day were selling higher than Big Four? A. 78.

Q. Now, when he brought in the 200 Smelters, did he take out 200 Big Four? A. He did.

Q. Have you the certificate numbers of the Smelters? A. I have.

Q. What are they? A. 56,308 and 9.

Q. And the certificate is made out to William Sulzer? A. I couldn't state positively; I think they were. The record will show.

Q. Now, have you, according to your —

The President.— Did you sell 200 Big Four then?

The Witness.— No, sir, we delivered it to him.

The President.— Delivered it to him? A. Yes, sir.

Q. What certificates did you deliver to him? A. 200 shares of CCC.

Q. Yes, but I mean what numbers of certificates? A. Certificates C24405 and 6.

Q. Those are the very certificates that he delivered to you? A. They are.

Q. Now, as of the end of the year 1910, have you made a computation as to how the account stood? A. I have not.

Q. You have not? A. No, sir.

Q. Now, see if my computation here is about correct. You had 200 shares of Big Four, is that correct?

The President.— He said that. He had 400, and he gave 200.

Mr. Kresel.— No, I am now speaking of a different date, if your Honor please. I am speaking of December 31. Before that we were talking of November 11.

The President.— Well, now, is there any change in the securities between — in the account between November of that date and December was the other?

Mr. Kresel.— December 31.

The Witness.— According to my memorandum which I have

had prepared for me, there was no change in the account between November 11, 1910, and April 26th, 1911?

Q. So that it is a fact, then, that at the end of the year 1910, you held for the account 200 shares of Big Four and 200 shares of Smelters? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. Now, at the current figures of those stocks, Big Four was selling at 65½ on the 31st of December, 1910; and Smelters was selling at 73¾, making the value of the stocks that you held $27,850. He paid you at that time $23,003.94, which included interest, which left him a margin of about $4,850? A. I should say that was about right.

Q. All right. Now, then, the next change, as you said, was April 26, 1911? A. Yes.

Q. And on that day you bought an additional 100 shares of Big Four for him, did you not? A. We did.

Q. At what figures? A. 57.

Q. And was that the current figure on that day? A. Yes.

Q. This was April, 1911? A. April 26, 1911.

Q. The stock had dropped from 80 to 57? A. Yes.

Q. Did you on that day get any additional margin? A. We did the next day.

Q. You did not on that day? A. No.

Q. Well, before you bought the additional 100 shares of Big Four for him, the account was pretty low, wasn't it? You had a margin of only about $2,900; the stock was selling at 57; 200 shares would be $11,400, and Smelter was selling at 73⅝, making a total value of that stock $26,125, and he owed you $23,240? A. On April 26, 1911, we had 300 shares of CCC, and 200 shares of Smelter. Our lien on those securities was $28,952. The market value, cash value was $31,900, leaving an equity or margin of $2,948. The next day, Governor Sulzer gave us 100 shares of CCC and their value, $5,700, would increase his margin or equity to $8,648.

Q. What was the number of the certificate of the 100 shares that he gave you on the 27th of June? A. C24406.

Q. That was the certificate that you had delivered to him in April? A. Yes, sir.

Q. I don't mean April. September, wasn't it?

Mr. Marshall.— November.

A. November.

Q. November, 1911? A. Yes, sir.

Q. On the 24th of June, 1911, what was the state of the account, Mr. Fuller? A. On the 24th of June, 1911, we —

Q. Just a minute. I withdraw that question. On the 24th of June, 1911, did Governor Sulzer bring in some more stock to you? A. He did.

Q. 100 shares of Southern Pacific? A. He did.

Q. What was the number of that certificate? A. C26554.

Q. Made out in his name? A. I think it was.

Q. And, upon delivering to you that 100 shares of Southern Pacific did you give him a check for $12,000? A. We did.

Q. Well, Southern Pacific on that day was selling at 120¼, wasn't it? A. 125.

Q. Selling at 125? A. That is what my record says. You can verify it.

Q. Talking of June 24, 1911, is that correct? A. June 26, 1911.

Q. You got the stock on June 24th, didn't you? A. Yes, but it was not entered until the 26th, because that was a Saturday I believe.

Q. When did you give him the check? The check will show if you have it there? A. That check was cashed and the cash given him.

Q. When? A. June 24, 1911.

Q. May I have the check, please? A. (Handing check to counsel.)

Q. I offer it in evidence.

Check offered in evidence, admitted and marked Exhibit M-93.

Q. Mr. Fuller, this check June 24, 1911, is drawn to the order of Harris & Fuller for $12,000, signed Harris & Fuller and indorsed Harris & Fuller, so that the $12,000 in cash was given to him on June 24, 1911? A. Yes.

By Mr. Marshall:

Q. Does that mean currency? A. Bills.

Q. What was the date? A. June 24, 1911.

By Mr. Kresel:

Q. On that day Southern Pacific was selling at 120¼? A. I can't say, I don't know.

Mr. Kresel.— It was conceded. May I show it to him?

The President.— Yes, you can show it to him.

A. On June 24th the price that you stated was the lowest price that it sold.

Q. What was the highest? A. The highest price was 123¾.

By Mr. Marshall:

Q. How was it the next day? A. It ranged from 124¼ to 126¾, and I figured it at 125.

By Mr. Kresel:

Q. On the 26th? A. Yes.

Mr. Marshall.— I would suggest when you read from the book hereafter you give the range of quotations, the highest and the lowest, so that he can strike an average instead of always taking the lowest.

Mr. Kresel.— I will do both.

Mr. Marshall.— All right.

Q. Now, the next change in the account was on July 10, 1911, was it not? A. The next change was on July 10, 1911.

Q. And on that day he brought in an additional 100 shares of Big Four, is that right? A. He did.

Q. What was the number of that certificate? A. C24405.

Q. On the 27th of November, 1911, did you give Mr. Sulzer another $1,000? A. We did.

Q. A check? A. Cash.

Q. Have you the check by which the money was drawn? A. I have (producing same.)

Mr. Kresel.— I offer it in evidence.

The check offered in evidence was received and marked Exhibit M-94.

Mr. Kresel.— It is drawn on the 27th of November, 1911, on the Gallatin National Bank, to the order of bearer $1,000, signed Harris & Fuller and indorsed L. R. Schenck.

Q. Who is L. R. Schenck? A. He is our cashier.

Q. One of your employees? A. Yes.

By the President:

Q. Then you drew the money on that? A. Yes.

Q. And gave it to him in currency? A. Yes, sir.

By Mr. Kresel:

Q. Now, on the 27th of November, 1911, is it a fact that Mr. Sulzer's margin in the account was about $9,300? A. On the 27th of November, 1911, we had 500 shares of CCC, 200 Smelters, 100 shares Southern Pacific, a debit balance of $48,233; market value of $57,700, an equity or margin of $9,467.

Q. Now, give the state of the account as of the end of the year 1911, December 30th. A. I cannot.

Q. You still had 500 shares of CCC and 200 Smelters and 100 Southern? A. We did.

Q. And according to the current prices they were worth $55,000? A. $57,000 on my record.

Q. $57,000, we will take it that way; then according to that you have a computation there? A. I was telling you the record I had here as of that date only.

Q. And as against that there was a debit balance of something like $48,600, is that correct? A. On the 27th of November —

Q. No, I am speaking of the end of December? A. I don't know.

Q. Now look at your account and see if $48,600 is not about

the amount which was owing you on that account? A. December, 1910?

Q. December, 1911.

The President.— You mean the end of the month?

Mr. Kresel.— The end of the year?

The President.— The end of the year?

Q. Mr. Fuller? A. That ledger is not here.

Q. The presiding judge suggests that I ask you whether there was any change in the account between the 27th of November, 1911, and the end of 1911, except to add on interest? A. There was not.

Q. There was not? A. No, sir.

Q. Now, the next change in the account was February 29, 1912, was it not, or was it? A. No, sir.

Q. It was just an addition of interest? A. Yes, sir.

Q. Have you a computation there to show how the account stood on that day? A. What day, please?

Q. The end of February, 1912? A. No, sir.

Q. Well, you still have 500 CCC, haven't you? A. Yes.

Q. And the 200 Smelters? A. Yes.

Q. And the 100 Southern? A. Yes.

Q. Now, at the current rates that day, these stocks were worth $53,000? A. I don't know.

The President.— You can read it from your quotation book.

Mr. Kresel.— Very well.

The President.— Or if he has got it, will you let him state it, counselor.

Mr. Kresel.— Subject to correction if they want to correct it afterwards.

The President.— Yes; you have got it there on your own memorandum.

Q. And there was a debit balance on the account of $48,964, is that correct? A. I haven't the account computed of that date.

Q. Well, have you a transcript of the account? A. I think you have the only one that I —

Q. Well, look at this and see (counsel passes paper to witness). A. (After examining.) The debit balance was $48,964.57.

Q. And assuming that my quotations for the stock that you had at that time are correct, and that they were worth $52,000 —

Mr. Marshall.— $53,000.

Q. $53,000. Then the margin there was about $3,500, was it not? The end of February. A. Will you give me the figures again?

Q. $48,900.

The President.— That is the debit balance.

Mr. Kresel.— That is the debit balance.

Q. And $53,500?

The President.— The value of the stock.

Mr. Kresel.— The value of the stock.

The Witness.— $4,400. (After examining paper.) $4,600.

Q. Now, as of October 31, 1912, there was no change in the account between the 29th of February and the 31st of October, was there, except to add interest month by month? A. (Witness examines papers.) The next change in the account was November 18, 1912.

Q. Yes. And I am now asking you as of October 31, 1912, which is just the end of the preceding month? A. There was no change at that time.

Q. No change? A. No.

Q. Now, then, I want to get the state of the account as of the end of October, 1912. You still held 500 CCC?

The President.— You still held the same securities?

Q. You still held the same securities? A. Yes.

The President.— And you had neither bought any more stocks on his account nor given him any money? A. No, sir.

Q. So there was in fact no change in any respect except the running of interest? A. That is all.

By Mr. Kresel:

Q. Now, at the current prices on that day, those stocks were worth $53,362.50, and according to that account the debit balance was $50,612, leaving a margin of about $2,700, is that correct? A. That is right.

Q. It was pretty low? A. Yes.

Q. Now, did you write to Mr. Sulzer at that time asking for more margin? A. I don't know.

Q. Will you look please and see? A. (Witness examines book.)

Q. Which was pretty low? A. Yes.

Q. Did you write to Mr. Sulzer at that time asking for more margins? A. I don't know.

Q. Will you please look and see?

Mr. Hinman.—While he is doing that, let me suggest —

The President.— I don't hear you.

Mr. Hinman.— Let me suggest, the Court stated that there was no change in the account except the addition of interest. I think there was a change also in the way of dividends during that long period there.

The President.— Just look and see.

The Witness.— That ledger has gone to New York.

By the President:

Q. Will the transcript of the account show? A. Mr. Kresel checked it off himself before he allowed me to send it.

Mr. Kresel.— There was no change. The last change, so far as interest is concerned, was January, 1911. We are talking of February, 1912.

Mr. Hinman.—Were not you inquiring as of October 31st?

Mr. Kresel.— 1912.

Mr. Hinman.— 1912. Isn't there a dividend on October 4th on the Southern Pacific?

Mr. Kresel.— There was 1911. October 4, 1911.

Mr. Hinman.—You may be right.

Mr. Kresel.— That is according to the transcript that they gave us.

Mr. Hinman.— That is all right.

The Witness.— I do not seem to have any letter or copy, until December 11, 1912.

By Mr. Kresel:

Q. What is the date of the letter immediately preceding that date?

Mr. Marshall.— Letter to whom?

The President.— If you have the date in your memory, call his attention to it.

Mr. Kresel.— I have not, your Honor. I have never seen those letters.

The Witness.— If you want to see these notices I am referring to, you are welcome.

Mr. Kresel.— Not at all.

The Witness.— There is a letter here of July 15, 1912. The copy is imperfect and I doubt if I can read it.

By Mr. Kresel:

Q. Well, read it as far as you can. A. (Reading) "William Sulzer, 115 Broadway —"

The President.— Speak a little louder, Mr. Witness, if you please, because those farthest gentlemen wish to hear it.

A. (Continuing.) "William Sulzer 115 Broadway, New York city, Dear Sir: We have repeatedly requested you to deposit

find to protect your account, without response." — I should take it. "We, therefore, must insist that our demand be immediately complied with. Pending the receipt of the margin required, we will endeavor to place stop orders on your securities but, owing to the wide market in CCC and St. Louis, it will be almost impossible to market these stocks without considerable loss, in the event of which we will hold you responsible for any loss that might occur.

Kindly give this your immediate attention and avoid the loss of your securities.

Trusting that we will be favored by return mail with your check for $8,000, the amount necessary, we are

Yours truly, HARRIS & FULLER."

By Mr. Kresel:

Q. That is dated July 15, 1912, is that correct? A. July 15, 1912.

Q. Between that date and November 18, 1912, you received no money or securities from Mr. Sulzer, is that correct? A. That is right.

Q. Now then, can you find no letter that you wrote to Mr. Sulzer with regard to this account on or about the 1st of November, 1912? A. The next letter that I find is December 11, 1912.

Q. Now, before December 11, 1912, Mr. Sulzer had made a payment into the account, had he not? A. He had, on November 18, 1912.

Q. And he paid how much? A. $10,000.

Q. And he paid that in currency, did he not? A. He did.

Q. To you personally? A. He did.

Q. State the conversation that you had with Mr. Sulzer at that time when he made the paper? A. Why, he handed me $10,000 and told me to credit his account; that he had told me that he would make a payment as soon as he could.

Q. When had he told you that? A. Well, he did not tell that to me. That was the conversation that took place. That is what he said he had said.

Q. You mean he came in and handed you $10,000 in cash and said to credit that to his account? A. I went to his office.

Q. Oh, you went to his office? A. I went to his office.

Q. At 115 Broadway? A. 115 Broadway.

Q. How did you come to go there? Was it at his request? A. It was.

Q. Had you, prior to going there, communicated with him about his paying something on account of this account? A. Only in these letters.

Judge Hiscock.— Will you ask him to state again what the condition of the account was on that day? There are so many I have forgotten; I didn't follow them.

Mr. Kresel.— Yes.

Q. On the 18th of November, 1912, will you state how the account stood? A. On the 18th of November, 1912, we had 500 shares of CCC, 200 shares of Smelter, 100 shares of Southern Pacific; the debit balance was $40,612; the market value was $52,600; the equity or margin was $11,988.

By the President:

Q. I thought the previous account was a debit balance of $48,000? A. $10,000.

Q. This is after the payment of the $10,000 on that day? A. Yes, sir.

The President.— I think that is what Judge Hiscock wants.

Judge Hiscock.— I wanted what the condition of the account was before.

The President.— That is what I thought.

By Judge Hiscock:

Q. All there is to it is that there was $10,000 worth, as you stated it? A. Yes, sir.

By Mr. Kresel:

Q. In other words, his margin then was only about how much? A. About $2,000.

By the President:

Q. On 800 shares? A. Yes, sir.

By Mr. Kresel:

Q. Now, we will run along, after the 18th of November, 1912; the next change in the account was the purchase of 100 shares of Big Four again? A. On December 5, 1912.

Q. And you bought it at 52? A. Yes.

Q. And the next change was that on the 16th of December, there was another payment of $6,000 in cash, in the account? A. Yes, sir.

Q. Was that made to you? A. No.

Q. To whom was it? A. I don't know.

Q. Now, on December 17, 1912, the day after he made that payment of $6,000, did he take out 10 shares of Big Four? A. Yes, sir.

Q. And what number of certificate did you deliver to him? A. C25681.

Q. Was that the number of the certificate that you had bought for him on December 5th? A. Yes.

Q. What was the state of the account then, on December 17, 1912, after he took out the 100 shares of Big Four? A. On December 17, 1912, he had 500 shares of CCC, 200 shares of Smelters, 100 shares of Southern Pacific; the debit balance was $40,167; the market value was $47,400; the equity or margin was $7,233.

By the President:

Q. Was that before he made the payment or after he made the payment, and took the 100 shares? A. After he made the payment and took the 100 shares.

By Mr. Kresel:

Q. Now, we come to the end of December, 1912. How did the account stand then? A. The end of December, the 30th of December, 1912, the account had 500 shares of CCC, 200 shares

of Smelters, 100 shares Southern Pacific. The debit balance was $40,261; the market value was $48,900; the equity or margin was $8,639.

Q. Did you see Mr. Sulzer on the 30th of December, 1912? A. Not to my knowledge.

Q. Did you have any talk with him over the telephone or did you get any letter from him on that day? A. Not that I know of.

Q. Did you write any letter on that day or about that day? A. I will have to refer to the books. Not that I know of.

Q. Please do that? A. December 30th?

Q. December 30, 1912. A. The next letter that we wrote him was December 13, 1912.

Q. December 13th? A. Yes.

Q. Well, did you in about the end of the year, then? Let me see that letter of December 13th.

(Counsel and witness examine letter referred to.)

Q. You have a letter of December 11th, haven't you? A. I have.

Q. Will you read that, please? A. (Reading)

"*December* 11, 1912.

"Hon. WILLIAM SULZER, *Washington, D. C.:*

"Dear Sir.— As you no doubt are aware, a panicky condition has existed in the market the past few days. We would therefore appreciate a deposit from you. Thanking you in advance, we are,

"Very truly yours,

"HARRIS & FULLER."

Q. Now, did you get this reply (passing paper to witness). A. (After examining.) We did.

Q. Just read that, please. A. (Reading.) Written on the 12th day of December, 1912.

"Messrs. HARRIS & FULLER, 45 *Broadway, New York City:*

"GENTLEMEN.— Your letter to Congressman Sulzer just received. He will be glad to take the matter up with you when he comes to New York the first of the week. Believe me,

"Very sincerely yours,

"F. S."

Q. Cisna, isn't it? A. Cisna, Secretary.

Mr. Kresel.— Just have that marked, will you, so we will keep our records straight. Mark that.

The letter offered for identification was received and marked Exhibit M-93 for identification.

Q. Now, following the receipt of this letter and on the 16th of December, there was $6,000 paid into the account, isn't that right? A. There was.

Q. Yes. Now, have you found any — a copy of any letter which you wrote to Mr. Sulzer about the end of the year?

Mr. Marshall.— The $6,000 you have just referred to are the $6,000 to which — of which the witness spoke a few moments ago?

Mr. Kresel.— Yes.

The Witness.— (After examining book). The date please, Mr. Stenographer.

Q. The end of the year 1912? A. (After examining book.) The next letter appears as of June 9, 1913.

Q. Well, we will come to that letter. Now —

The President.— Well, your answer —

The Witness.— That is correct.

The President.— Then your answer is you find no letter about the end of the year?

The Witness.— I do not.

Q. Do you find any letter that you received from Mr. Sulzer about the end of the year 1912? A. No.

Q. Have you produced all of the letters that you have and that you received from Mr. Sulzer? A. I have.

Q. And is that the only one that I just read before? A. Yes.

Q. Now, I want to show you this copy of the transcript, or transcript, because you have not your last ledger here, I understand? A. No.

Q. With our permission you took it back?

The President.— Your adversary, I think, consented that you might use the transcript instead of the original.

Mr. Marshall.— We have.

Q. Look at that paper, and state whether that is a transcript of what appears upon your last ledger? A. (After examining) Yes, sir.

Q. Now, I direct your attention to the following entry —

The President.— Now, you want that marked in evidence?

Mr. Kresel.— I just want the — not for the present.

The President.— Very well.

Q. I direct your attention to the entry on the credit side of this account on December 30, 1912, reading as follows (reading). "December 30, 500 CCC; 200 Am. Smelters; 100 So. Pac. Delivered H. & F. Account Loan, $40,261.58," and I ask you whether you gave the directions to your bookkeeper to make that entry on your ledger? A. I did not.

Q. Who did? A. I don't know.

The President.— Well, what does it mean?

Mr. Kresel.— If your Honor will permit me, may I question him about that?

Q. H. & F. in that entry stands for Harris & Fuller, does it not? A. Yes.

Q. Now, I will ask you the question which the Court just asked. What does that entry mean? A. It was a cross entry of a loan made on that date.

Q. A loan made to whom? A. William Sulzer.

Q. By whom? A. Harris & Fuller.

Q. Was it made in cash? A. No.

Q. By check? A. It was a cross entry on my book.

Q. Now, just answer the question. Was it made by check?

The President.— Go easy with the witness; he is going to answer.

Q. Was it made by check? A. No.

Q. Did any money pass from Harris & Fuller to Sulzer? A. No.

Q. Did you speak to Sulzer on that day about making any loan to him? A. No.

Q. Did anybody in your firm? A. I don't know.

Q. What were the terms of the loan, how long was it to run? A. No date set.

Q. What interest was it to draw? A. I think 5 per cent.

Q. That was the rate of interest you had been charging him right along on this account? A. Yes.

Q. Did he give a note for this loan? A. No.

Q. Did he give any memorandum about it? A. No.

Q. Now, what was the purpose, if I may so call it — of making that entry in the account of William Sulzer on that day? A. The purpose was to keep those securities in our possession all the time.

Q. You had had them in your possession right along, had you not? A. Not necessarily.

Q. Well, didn't you have them in your possession right along? A. I mean by in our possession, in our box.

Q. Well, hadn't you had them in your box right along? A. No.

Q. Where had they been? A. They might have been in loans, collateral loans.

By the President:

Q. That is, the loans that you obtained from other parties? A. Yes, sir.

By Mr. Kresel:

Q. Well, now, you could have — you had it in your power right along, either to hold those securities in your box or to send them out as securities for loans? A. Yes.

Q. Was it necessary that this entry be made upon the books of your firm in order thereby you should be enabled to keep these securities in your box? A. A loan of that character made we would keep the securities in our box.

Q. A loan of what character? A. Of this loan?

Q. What is the character of this loan; how was it a loan?

By the President:

Q. Won't you explain exactly why it was and what it means; what was the reason for this change; apparently it was an ordinary account current before that? A. Yes, sir.

Q. Why did you change it, and did you have any conversation with Governor Sulzer about the change? A. I had no conversation with him whatever in regard to it.

Q. What was the object of that transaction; what would it mean in a stockbroker's office? A. It would mean that instead of taking those securities and putting them out in collateral loans we would keep them in our box and not use them.

By Mr. Kresel:

Q. What was the purpose of doing that?

By the President:

Q. Why did you want to make that change? That was no accommodation to you, was it? A. None whatever.

Q. On the contrary, it was limiting your power to use them? A. It was.

Q. How did you come to do it? A. Probably because my partners thought it was wise not to have securities going around the street in William Sulzer's name.

By Mr. Kresel:

Q. William Sulzer had been elected Governor by that time, had he not?

Mr. Marshall.— Yes, we concede that.

Q. Isn't that the fact? A. Yes.

Q. And he was just about to be inaugurated? A. Yes.

Q. The very next day? A. Yes.

Q. And is it your recollection, Mr. Fuller, that you had no talk with Mr. Sulzer about that time about making this change upon your books? A. I don't recollect any talk with him in regard to it, no.

Q. Who was the bookkeeper if you can tell us, that made that entry? Of course you have not the book, but I thought you might be able to tell us? A. I cannot tell.

By the President:

Q. Was there more than one bookkeeper on the ledger? A. Yes, sir.

Q. How many? A. Three.

Q. Who were they? A. L. R. Schenck, Howard Gunn, I don't know the name of the other.

Q. In the ordinary course of business, witness, that would not be done by a bookkeeper of his own authority, it would be done by direction of one of the partners? A. Absolutely.

Q. And your partners are whom? A. Andrew G. Vogt and Clarence R. Nims.

Q. And are they both in the city of New York now, so far as you know? A. I think so.

Q. Now, Mr. Fuller, I want to exhaust your recollection about this transaction. Don't you remember having a talk with Mr. Sulzer, about the 30th of December, 1912, in which he told you, in substance that, owing to the change in his situation by reason of his election, he should prefer that the accounts which he was carrying with your firm should be thus transferred into an alleged loan? A. I do not.

Q. Is your recollection so clear about the subject that you will swear that no such conversation took place? A. I will not.

Q. Now, you have a book, have you not, in your firm, and had at that time, wherein loans made by your firm were entered? A. Yes.

Q. Have you that book here? A. I have not.

Q. What is the name of that book? What is it called? A. Stock loan.

Q. Stock loan? A. Yes, sir.

Q. And in that book are made entries of loans which are made by Harris & Fuller from other people, and also loans made by Harris & Fuller to other people? A. No.

Q. What entries are made in there? A. Records of money borrowed only.

Q. By Harris & Fuller? A. By Harris & Fuller.

Q. In what book is the record kept of loans made by Harris & Fuller to other people? A. It would be on the blotter and in money loan account on the ledger.

Q. Very well. Now, please turn to money loan account, the ledger of December 30, 1912. Have you that here? A. The ledger is in New York.

Q. Have you the blotter of December 30, 1912? A. I think so.

Q. Please turn to that and see whether there is any record of this loan to William Sulzer? A. I do.

Q. You are pointing —

The President.— Speak out loud so all will hear.

Q. You are pointing to an entry in this blotter, under date of Monday, December 30, 1912. It is the last entry on the page, is it not? A. On that page. It is carried forward to the next page, though.

The President.— Keep your voice up. He will not answer and speak loud unless you keep back at your place there, counsel. It is troublesome but it is better than having the stenographer repeat it.

Q. Is the entry to which you pointed the last entry on that page? A. It is the last entry on that page for that day. It is not the last entry made for that day on this book.

By the President:

Q. That is to say. There are some entries for that on the following page? A. There are eight pages of entries on that day, sir.

Q. And this is not the last of the whole eight pages? A. This is the last on the first page of that day.

By Mr. Kresel:

Q. And is there a line drawn under the entries preceding the entry now in question? A. No.

Q. Is there a line drawn there at all? A. There is.

Q. Through what? A. Through an entry that was made trans-

ferring forty shares of Brooklyn Rapid Transit from some name to the name of Harris & Fuller.

Q. In whose handwriting is the entry that you have pointed to as the entry with regard to the Sulzer account? A. L. R. Schenck.

Q. Is he your bookkeeper? A. He is our cashier and blotter man.

Q. Is he still in your employ? A. He is.

Mr. Kresel.— I offer, if your Honor please, the entry pointed to by the witness, in evidence.

Mr. Herrick.— Read it in evidence.

Mr. Kresel.— No, I want it marked in evidence, then we will read it.

The President.— Mark it in evidence.

The entry offered in evidence received and marked Exhibit M-96.

Mr. Kresel.— May I, if your Honor please, have this passed around to the court (referring to Exhibit M-96)?

The President.— Yes; if you want to.

Mr. Herrick.— Cannot we have it read in evidence first?

The President.— Yes. It will be read first.

Mr. Kresel.— The entry reads as follows:

"Loan W. S. 500 CCC; 200 Smelter; 100 Southern Pacific, $40,261.58," "Money loaned."

Then the following numbers of certificates:

C-25806 —

The President.— Well, it is not necessary to read those?

Mr. Kresel.— That is not necessary?

The President.— No.

By Mr. Kresel:

Q. Before I pass this around, Mr. Fuller, I direct your atten-

tion to the letters W. S. after the word "loan" and ask you to state whether you know when those letters were written in there? A. I do not.

Q. Do you know, Mr. Fuller, when that entry was made? A. The day that it appears there, December 30, 1912.

Q. You know that, do you? A. Well, that is the way we do business.

By the President:

Q. That is what you mean; have you any personal knowledge or recollection? A. No, I have not.

Q. It is not in your handwriting? A. No, sir.

Q. As you stated, it was in Schenck's handwriting? A. Yes, sir.

(At this point the witness spoke privately with Mr. Kresel.)

Mr. Kresel.— The witness wants to know whether he can cover up the other names in the book?

The President.— Yes, he should. There need be no third party's names brought in here.

Q. I have no curiosity about them.

The President.— No, not you. Yes, you may cover them up, witness. That is fair.

Judge Bartlett.— Would it be proper if counsel would disclose why it is important for us to look at this, and why it does not suffice for us to merely hear it read.

Mr. Kresel.— If the Court please, it is claimed by the Managers that this entry was not made on December 30, 1912; that it shows upon its face that it was not made at that time, and that part of it was not made at the same time that the other was made, and we shall ask your Honors to direct the witness to leave this book in Court so that we may give our experts access to this book, in order that they may more closely examine it.

The President.— Yes, but I think it is right the names of other parties should be protected.

Mr. Marshall.— May it please the Court: I desire at this time to object to this book on the ground that it appears clearly that this book was the book of Harris & Fuller. There is nothing to indicate that the respondent had any knowledge of this book or the entries, or the character of the entries, or when they were made, or how they were made. This is entirely a matter which is, so far as he is concerned, *res inter alios acto,* and they do not pretend to have ever had a conversation with the respondent or that his attention was ever called to this entry. Why then, shall the books or the entries upon books of a third party be considered as evidence in any way against the respondent?

The President.— You have let it all go in to this stage.

Mr. Marshall.— No, your Honor, may I make an explanation as to that. We have objected to nothing concerning the account, and the transaction as to which this witness had knowledge of the fact that stocks were put up as collateral, that certain loans were made, that certain stocks were purchased, but this is an entry in these books made on the 31st, or as of the 31st of December, 1912, and they are now claiming that there was something wrong or irregular about that entry. That is the subject that we are now addressing our attention to, not to the account itself.

The President.— You have allowed it to go in. It is in evidence now, and the Court can not do other than to let it stand. Of course, unless your client is connected with it in some way, there is no inference against your client from it, but I will not, at this stage, after it has gone in, try to prevent it.

Mr. Marshall.— I was otherwise engaged when it was offered and I move to strike it out.

The President.— I think I will let it stand.

Mr. Stanchfield.— Just a word in answer to the statement of counsel. You asked the witness why that change was made. He gave the reason that he presumed one of his partners did not want the name of William Sulzer floating around the street, or in substance that.

The President.— I have forgotten whether counsel suggested

that. He said probably one of his partners dictated that change. But I will let it go in.

By the President:

Q. Have you covered that up? A. Yes, sir.

The President.— Then show it to the gentlemen of the Court.

Senator Foley.— While they are examining the record may I ask a question?

The President.— No, you had better wait, because the attention of our fellow members will be distracted from this book. If you will wait until the end, when it has been passed around and then put your question, I think it will be better.

The President.— Don't have any conversation with the counsel, gentlemen. You may have it among yourselves.

Now, Senator Foley, you may put your question to the witness, if you want to.

By Senator Foley:

Q. Mr. Fuller, I want to know if you had the total amount advanced by your firm on the collateral deposited with you to the respondent personally. You gave the figures separately. I want to know if you have the total there? A. I think that the transcript that Mr. Kresel has will show that.

Mr. Kresel.— What was that?

The Witness.— The total amount of the moneys paid to Governor Sulzer by my firm.

Mr. Kresel.— I will come to that, Senator Foley, in just a minute, if you will just let that stand.

By Mr. Kresel:

Q. Mr. Fuller, will you be good enough to remove that paper that you have pinned over the entries long enough for you to state whether the summation of the amounts on that page where the

entry in question is written includes the $40,000 referring to that entry? A. Yes.

Q. Now, may I — will you cover the names and let me just look at the figures?

(Counsel and the witness here examine the book referred to.)

Q. Mr. Fuller, I ask you again to total up the figures in that column, and state whether it is not a fact that the total at the foot of the column does not include the $40,000 which you say was loaned? A. (After making calculation) The figures in that column do foot up the total amount of the figures at the bottom of the page.

By the President:

Q. Including that $40,000, whatever it was, forty odd thousand dollars? A. It does include the $40,261.58.

By Mr. Kresel:

Q. What do your figures, as you now calculate them, what are they? A. The amount brought forward is $180,383.13 from the page preceding. The amount at the bottom of the page totals $585,978.54.

Q. Is that what appears written there in ink? A. That is what appears there written in ink, yes, sir.

Q. And what do you make the figures, as you just totaled them up? A. $585,978.54.

Q. And how much is carried forward on the next page? A. $100, oh, on the next page, $585,978.54.

Q. Exactly the amount which appears there in ink? A. Yes, sir.

Q. Now, then, turning again to the account — you will have to use this because you have not got your ledger — after the 30th of December, 1912, what is the next entry in that account? A. January 1, 1912.

Q. I am speaking of entries after December, 1912.

The President.— That is, January of this year?

Mr. Kresel.— No. He has made a mistake, if your Honor please. He was looking at the wrong column.

The President.— Call his attention to the error, Mr. Kresel.

By Mr. Kresel:

Q. What is the answer, Mr. Fuller? A. June 16, 1913.

Q. Now, before we take up that entry, will you state whether between the 30th of December, 1912, and the 16th of June, 1913, you had any communication with Governor Sulzer? A. Not that I recall.

Q. Just look at your letter book. Didn't you write him on or about the 2d or 3d of June, 1913? A. No.

Q. Please look and make sure. A. You are speaking about me personally. I do not write the letters.

The President.— Look at your letter book and see if the firm did not.

Mr. Kresel.— I did not mean you personally; I meant your firm.

The Witness.— What was the date?

The President.— Do you know the date?

Mr. Kresel.— I do not. I know it was early in June. A. It was June 9, 1913.

Q. That is right. Please read into evidence that letter? A. (Reading) "We sent you a telegram last week—"

The President.— Louder please, Mr. Witness.

A. (Continuing) "We sent you a telegram last week stating that we would like to have an interview with you, but as yet have not received any reply. It is very imperative that we should get in communication with you immediately and we would therefore thank you to advise us upon receipt of this letter where and when we can see you. Yours very truly, Harris & Fuller."

Q. Where is that addressed to? A. Executive Mansion, Albany, N. Y.

Q. Have you a copy of the telegram which is spoken of in that letter as having been sent to the Governor? A. I have not.

Q. The telegrams are not copied in that book? A. No, sir.

Q. This was the 9th of June, was it? A. The 9th of June.

Q. Now, see, whether between the 9th and 16th of June you wrote him any more letters? A. On the 11th of June.

Q. Please read that one. A. (Reading):

"JUNE 11, 1912.

"Honorable WILLIAM SULZER, *Albany, New York:*

"DEAR SIR.— We have been endeavoring for a number of days to get in touch with you in reference to the condition of your account, it being very bad and weak, without any success, and until this A. M., when we were advised that you would meet us on Saturday, June 14th, at the Waldorf, which arrangement is not at all satisfactory owing to the feverish and uncertain condition of the market. We must insist on immediate attention to this very important matter. Therefore, we request a deposit of $15,000 at once to bring your account up to the required margin. Failing to comply immediately with our demand, we ask you to take up or transfer your account forthwith, as we would rather have you do that than compel us to sell you out. Your indifference necessitates us to take this method of calling your attention to what we believe is of vital interest to yourself; therefore are of the opinion that after you realize the importance of promptness you will immediately comply and oblige us with the amount requested.

"Hoping to hear from you either by wire or telephone immediately upon receipt of this communication, we are,

"Yours truly,

"HARRIS & FULLER."

Q. Mr. Fuller, on what day between the 30th of December, 1912, and the 11th of June, 1913, was this loan changed back into an account so that it now required margin? A. It was not changed.

By the President:

Q. It remained then at the time of that correspondence in the same form that it was at the close of the preceding year? A. Yes, sir.

Q. That is, a loan? A. Yes, sir.

By Mr. Kresel:

Q. Now then, we will come to the 16th of June, 1913; what happened then? A. The 16th of June, 1913, the loan was reduced from $40,261.58 to $35,851.01.

Q. Is that all? A. That is all.

Q. Now, Mr. Fuller, in the first place what you did on the 16th of June, 1913, was to charge the account with interest on the debit balance of the 30th of December, 1912, from that date to the 16th of June, 1913; is that not correct? A. We returned the loan by a cross entry on our books charging the interest to date and crediting a check for $5,000 received from A. E. Spriggs and a dividend received on 200 shares of Smelters of $200.

Q. Won't you please follow me and let me see if we cannot get it the way I tried to get it? Is it not a fact that on the 16th of June, 1913, you charged this account with interest on the amount which was due on the 30th of December, 1912, from that date to the 16th of June, 1913? A. Interest was charged to date, yes.

Q. And that amounted to $939.43? A. I could not state there.

Q. Well, look at your account and state? A. Yes, sir.

Q. Now, on the same day you received a check of $5,000 did you not, from Mr. Sulzer, or Governor Sulzer? A. No, from Mr. Spriggs.

Q. No, it was a check of A. E. Spriggs, but didn't you receive it from Governor Sulzer? A. I think not.

Q. Do you know personally? (No response.)

By the President:

Q. Did you do it or did somebody else in the office get that check? A. Somebody else in the office got the check.

By Mr. Kresel:

Q. Wasn't it a check of A. E. Spriggs? A. Yes.

Q. And that is the only entry that appears on this transcript? A. Yes.

Q. It doesn't appear that Spriggs delivered it, does it? A. No.

Q. All right. Now, then, in addition to getting this check for $5,000, you also credited the account on that day with the receipt of a dividend on the American Smelters of $200, is that correct? A. Right.

Q. And you anticipated, did you not, the receipt of a dividend on 100 So. Pacific of $150, because that you did not receive until July 1st, according to your account. (Counsel passes paper to witness).

The President.— As I understand it, dividends are declared to stockholders on a certain date, but may be payable at a later day?

Mr. Kresel.— Right.

By the President:

Q. Had you transferred those stocks to your name? A. I couldn't say, sir.

Q. Well, you got the dividend there? A. We credited this account on July 1st, we credited William Sulzer's account with 1½ per cent. dividend on 100 shares of So. Pacific.

Q. Well, then, you credited it with Smelters too, didn't you, the dividend? A. 1 per cent. dividend on 200 shares of Smelters.

Q. You would not have done that — you would not have received it, would you, unless the stock was transferred to your name? A. Probably it was.

By Mr. Kresel:

Q. Now, Mr. Fuller, let us assume now that you received that dividend on the Smelters, not on July 1st, but on the 16th of June, because you will see from the calculation, that you credited it as of that date. The fact is, then, that you have received on the 16th of June, $5,000 in a check and $350 in the way of dividends, making $5,350, isn't that correct? A. Yes.

Q. Now, deduct the $5,350 from the total debit balance on that day, and see whether the difference is not $53,851.01? A. It is.

Q. And that is exactly the amount of what I showed you in the loan, isn't it? A. That is the loan account that day.

Q. In other words, you made an entry in that account that on the 16th of June, 1913, you loaned Governor Sulzer $35,851.01, when as a matter of fact there wasn't a cent passed to him, isn't that right?

Mr. Marshall.— Wait a minute.

Mr. Kresel.— All right, I withdraw that.

The President.— You have got all that; he has told you how it was done; it was a mere book entry.

By Mr. Kresel:

Let me repeat just one question. What was true of the alleged loan transaction of December 30, is true of the one of June 1, 1913, is it not?

Mr. Marshall.— I object to that as leading and improper.

The President.— It is only to shorten matters.

Mr. Marshall.—And summing up at the same time.

By the President:

Q. Well, you have stated there what you did. You calculated interest and added that to his debit; then you credited him with the $5,000 he paid you; with two dividends, one that you had actually received on Smelters, and one on the Southern Pacific that you had not received, found what was his balance due from him at that date, and treated that as a new loan of that date? A. That is it exactly.

Q. And so carried it on your book? A. Yes, sir.

By Mr. Kresel:

Q. And it was all simply a bookkeeping entry, wasn't it? A. That was a cross entry paying off one loan and making another.

Q. Now, the next entry in that account is as of July 9, 1913, is it not? A. Yes, sir.

Q. On that day, you sold for the account 100 So. Pac., is that correct? A. That is right.

Q. Now, after crediting the proceeds of that sale, how did the account stand, if you have it on your memoranda? A. (No response).

Q. Let me see if I cannot lead you there? May I do that?

The President.— Yes, you may lead him. You have the book.

Q. There was still a balance due then of $26,603.01 as against which you have 500 shares of CCC and 200 Smelters, which, at the current prices at that time, were worth $32,125, leaving a margin of about $55,000? A. That is right.

Mr. Marshall.— An equity.

Mr. Kresel.— Well, call it equity if you prefer.

Mr. Marshall.— Yes, that is what is was.

The President.— Yes. You want to put some more questions before the adjournment, or will you wait?

Mr. Kresel.— If your Honor will permit me to put two more questions?

The President.— Yes.

By Mr. Kresel:

Q. On July 15, 1913, and that is the last as we see of this account, there was a debit balance of $26,739.71, wasn't there? A. Yes, sir; that's right.

Q. And you still had against the account the 500 CCC, and the 200 Smelters? A. Yes, sir.

Q. They were worth at that time $31,825? A. $33,500.

Q. Very well. We will take your figures, $33,000 and what? A. $500.

Q. $33,500? A. Yes, sir.

Q. Leaving him a margin in that account on that day of over $7,000, wasn't it? A. $6,761.

Q. How much? A. $6,761.
Q. $6,761? A. Yes.

Mr. Kresel.— Now, if your Honor will suspend, I will finish with the witness at 2 o'clock.

The President.— Yes.

The Crier.— Hear ye, hear ye, hear ye, this Court will now take a recess until two o'clock this afternoon.

Whereupon, at 12:31 o'clock P. M., the Court adjourned until 2 o'clock P. M.

AFTERNOON SESSION.

The Crier.— Judges of the Court of Impeachment.

The President.— Call the roll.

The Clerk thereupon called the roll and found a quorum present with the following absentees:

Judge Collin.
Judge Gray.
Senator Fitzgerald.

The Crier.— Hear ye, hear ye, hear ye, this Court now resumes this session from recess.

Mr. Kresel.— Mr. Fuller.

MELVILLE B. FULLER, recalled.

By Mr. Kresel:

Q. Mr. Fuller, this account that we have been analyzing was closed on the 15th of July, 1913, was it not? A. It was.
Q. On that day the debit balance was $26,739.71, is that correct? A. It was.
Q. And, according to the market price of the securities which you then had against this account, there was a margin over and above the indebtedness of about $6,800? A. That is right.

Q. Now, before the account was closed, did you have any communication with Governor Sulzer about closing it? A. We did.

Q. And was that in the form of correspondence? A. No.

Q. Did you see Governor Sulzer about it? A. No.

Q. Did he telephone to you? A. No.

Q. How did he communicate with your firm with regard to closing the account? A. Over the telephone.

Q. And what was said by Governor Sulzer? A. He referred us to ex-Governor Spriggs.

Q. This gentleman that you are speaking of as ex-Governor Spriggs, do you mean A. E. Spriggs who was at one time Governor of the State of Montana? A. Yes, sir.

Q. And did ex-Governor Spriggs have his office in the same suite where Governor Sulzer had his law office? A. Yes.

Q. What did Governor Sulzer say with regard to your seeing Governor or ex-Governor Spriggs? A. "Friend Nims, what Governor Spriggs said is agreeable to me. Yours, William Sulzer."

Q. Nims is one of your partners? A. He is.

Q. And was such on the 15th of July, 1913? A. He was.

Q. And is what you have just read a note sent by Governor Sulzer to Mr. Nims? A. It was.

Q. I notice on the back of this card which you have handed me, the date July 8, 1913. Is that the date on which this card was delivered? A. I presume it was.

Q. And did ex-Governor Spriggs present this card to Mr. Nims? A. Very likely.

Mr. Kresel.— I offer it in evidence.

The President.— Any objection?

Mr. Marshall.— No objection.

(The card offered in evidence received and marked Exhibit M-97.)

Mr. Kresel.— This is a card with the imprint "Mr. William Sulzer," and reads, "Friend Nims, what Governor Spriggs says is agreeable to me. Yours, William Sulzer."

Q. Mr. Fuller, are you sufficiently acquainted with the hand-

writing of Governor Sulzer, to be able to state whether the writing on the card is his handwriting? A. I am not.

Q. What was the message which ex-Governor Spriggs brought to your firm? A. He conferred with him in regard to having the Governor take up his account.

Q. Did your firm request that the account be taken up? A. We did.

Q. Was that request made by letter? A. I think not.

Q. How was it conveyed to the Governor? A. Through Spriggs, over the telephone, I think.

Q. And did your firm assign any reason why it was desired that the account be closed?

Mr. Herrick.— It is immaterial.

Mr. Kresel.— Do I understand that is objected to?

Mr. Herrick.— Yes.

The President.— Objection sustained.

Q. The week after this card was presented by Governor Spriggs the account was closed? A. It was.

The President.— Counsel, has the witness said how the account was closed?

Mr. Kresel.— I am just going to inquire.

Q. How was the account closed? A. It was delivered to Mr. Josephthal.

Q. You mean the securities were delivered to Mr. Josephthal? A. They were. He gave us a check.

The President.— For what was due you?

The Witness.— Yes, sir.

Mr. Marshall.— It was a transfer of the account?

The Witness.— Yes, sir.

Q. Who is Mr. Josephthal? A. Why he is a member of the firm of Josephthal, Louchheim & Company, members of the New York Stock Exchange.

Q. Do you know Mr. Josephthal's first name? A. Louis M. Josephthal.

Q. I notice in the transcript of your account the entry that on the 15th of July the securities in this account were delivered to Lieutenant-Commander L. M. Josephthal? A. That is right.

Q. Lieutenant-Commander of what? A. I don't know.

Mr. Brackett.— Can we get a concession of counsel?

Mr. Marshall.— What do you want us to concede?

Mr. Brackett.— What he was Lieutenant-Commander of.

Mr. Marshall.— We want to know what you say he is, and then we will concede it.

Mr. Brackett.— For one thing he is on the Governor's staff. We would like that concession.

Mr. Marshall.— There is no such position as Lieutenant-Commander on the Governor's staff.

Mr. Brackett.— He was on the Governor's staff.

Mr. Marshall.— We concede it.

The President.— Now you have an admission from counsel that he was on the Governor's staff.

Q. When Lieutenant-Commander Josephthal came to take away the securities did he present any authorization from the Governor? A. He had a card.

Q. A card? A. Yes, sir.

Q. Governor Sulzer's card? A. Yes, sir.

Q. Have you that? A. I have.

Mr. Kresel.— I offer that in evidence.

The President.—Any objection?

Mr. Marshall.— Let's see what it is first. No objection.

(The card offered in evidence is received and marked Exhibit M-98.)

Mr. Kresel.— This is again a card bearing the imprint of Mr. William Sulzer.

"Dear Mr. Nims.— Please carry out the suggestion of the bearer, Commander Josephthal, and oblige me.

"Yours,

"WILLIAM SULZER.

"July 10th."

By Mr. Kresel:

Q. That was presented by Mr. Josephthal on July 10th? A. It was.

Q. 1913? A. Yes, sir.

Q. What was the suggestion of Commander Josephthal? A. The suggestion was that we transfer the account to him.

Q. And the actual transfer was not made until the 15th of July? A. The 15th of July.

Q. Why the delay? A. Because we refused to transfer the account without a proper order from the Governor.

Q. Did Lieutenant-Commander Josephthal finally present an order which you considered proper? A. He did.

Q. Have you that? A. I have (producing paper).

Q. Was this paper which you have handed to me presented by Mr. Josephthal personally? A. It was.

Q. And did he present it to you personally? A. He did not.

Q. To whom did he present it? A. My partner.

Q. Which one? A. I couldn't say positively.

Q. When was the first time that you saw this paper? A. When I was before the Managers' Committee in your office.

Q. That was on September 12, 1913, wasn't it? A. I think you had it marked for identification.

Q. Well, it is marked as an exhibit in that proceeding, September 12, 1913. Does that refresh your recollection? A. I think so.

Mr. Herrick.—What proceeding do you refer to, Mr. Kresel?

Mr. Kresel.— I refer to an examination of this witness before the Managers of the Assembly.

Mr. Herrick.— In your office? Private?

Mr. Kresel.—Yes. In the Managers' office.

Mr. Herrick.—A private inquisition?

Mr. Kresel.—You can call it a private inquisition if you please.

The President.— One moment, gentlemen. Just avoid comment and keep right to work.

By Mr. Kresel:

Q. Of your own knowledge, therefore, Mr. Fuller, you are unable to state, are you not, whether this paper was in the condition that it is now when it was presented by Mr. Josephthal to your partner? A. Personally, I did not see it when he presented it.

Mr. Kresel.— That is what I mean. Now, I offer this paper in evidence.

Mr. Herrick.— Let me see it?

(The paper offered in evidence was received and marked Exhibit M-99.)

Mr. Kresel.—

"New York, N. Y., *July* 14, 1913.

"*Messrs. Harris & Fuller, New York City:*

"Gentlemen.— Please deliver to Lieutenant-Commander L. M. Josephthal the securities now held as collateral in my loan upon the payment of the debit balance due thereon.

"Yours truly,

"William Sulzer."

Then under the signature of "William Sulzer" a line, and under that "For Mrs. Sulzer," and then another line.

Q. Mr. Fuller, on the 14th of July, 1913, did you know Mrs. Sulzer? A. No.

Q. Did Mrs. Sulzer at any time have anything to do with this account of William Sulzer about which you have been testifying?

Mr. Herrick.— One moment. That is objected to as a conclusion of the witness.

By the President:

Q. Did you have any transaction with her to your knowledge about this account? A. No.

By Mr. Kresel:

Q. Did your firm know Mrs. Sulzer in connection with this transaction at all?

Mr. Herrick.— Objected to.

The President.— Objection sustained.

Q. Did Mrs. Sulzer at any time call at your office?

Mr. Marshall.— Same objection.

The President.— He can answer that.

By the President:

Q. As far as you know did you ever see her there? A. No.

By Mr. Kresel:

Q. Did you or your firm ever have any communication with Mrs. Sulzer in regard to this account that we have been discussing?

Mr. Herrick.— Same objection.

The President.— He can answer as far as he knows. He cannot answer for the other members of his firm. Witness, answer as far as you are concerned. A. No.

Q. Is there any entry upon the books of Harris & Fuller in connection with this account wherein Mrs. Sulzer is mentioned? A. No.

Q. Did Mrs. Sulzer ever pay to your firm any money in connection with this account? A. No.

The President.— He already said that he never knew anything about her connection with the account so far as his knowledge is concerned. Of course that excludes payments and every other matter.

Q. Now, Mr. Fuller, this account ran for a period of a little over three years, did it not? A. Yes.

Q. Is it the fact that during the entire period of three years there were only three purchases made for that account? A. Yes.

Q. Is it the fact that during that entire period there was only one sale for that account? A. Yes.

Q. Now will you refer to the transcript of the account and see whether it is not the fact that during those three years the following payments were made by your firm to William Sulzer.

Mr. Herrick.— Is there any use of wasting time this way. We have been all over it; he has drawn it all, all the payments that were made.

Objection overruled.

Q. Is it the fact that the following payments were made to Mr. Sulzer June 27, 1910, $6,000? A. Yes, sir.

Q. July 14, 1910, $7,000? A. Yes, sir.

Q. July 19, 1910, $500? A. Yes.

Q. September 2, 1910, $200? A. Yes.

Q. September 26, 1910, $1,000? A. Yes.

Q. June 26, 1911, $12,000? A. Yes.

Q. July 10, 1911, $5,500? A. Yes.

Q. November 27, 1911, $1,000? A. Yes.

Q. And those were all the payments made to him, were they not? A. Yes.

Q. Making a total of payments to him of $33,200. Now you might figure it.

The President.— Well, you state it, and the Court will assume it is true unless it is challenged. State the calculation.

Q. Now then, is it also the fact, Mr. Fuller, that Mr. Sulzer put into that account 500 shares of Big Four of which he withdrew 300, leaving 200 in the account? A. At the end of the account there were 500.

Q. I know you bought some for him. I am speaking of what he brought to you.

The President.— Really all this was duplicated, wasn't it? He took it away once and brought it back again?

Mr. Kresel.— That is right.

The Witness.— We received 500 shares of CCC from him.

Q. And you delivered to him 300 shares, didn't you? A. We delivered him 300 shares.

Q. So that of the Big Four stock that he brought in to you, as distinguished from what you purchased for him, there was left in the account 200 shares? A. Yes.

Q. Now, the first 100 shares that you did not turn back to him was delivered to you on the 27th of June, 1910? Wasn't it? A. That is right.

The President.— You have got that already. You can assume that in your questions without asking him to answer.

Mr. Kresel.— Very well.

Q. Now, is it a fact that the 200 shares of Big Four which you did not turn back to him, were valued at the time when they were delivered to you, at $13,700, the first one at 80 and the second at 57? A. The first one was valued at 80; the one valued at 57 was purchased.

Q. No. He delivered to you 100 shares on the same day when you purchased that 57, didn't he? A. That was received for nothing.

Q. I say the value at the time when you received it was 57? A. Yes.

Q. All right. Then, the value of the 200 shares which were not redelivered to him was a total of $13,700? A. Yes.

Q. Now, in addition to that he also put into the account 100 So. Pacific on June 26, 1911, didn't he? A. Yes.

Q. Which at that time was worth $12,000? A. Yes.

Q. He also put in $10,000 in cash on November 18, 1912? A. Yes.

Q. $6,000 in cash on December 16, 1912? A. Yes.

The President.— You have got all that.

Mr. Kresel.— I want to sum it up.

The President.— Just give how much the payments were that he got.

Q. He gave to you altogether cash payments of $21,000, didn't he? A. $21,000.

Q. And on July 15, 1913, through Lieutenant-Commander Josephthal he put into the account $26,739.71? A. Yes, sir.

Q. Now, totaling up the amounts of cash that he paid in,

personally and through Josephthal, to the value of the 200 shares of Big Four that he did not take back, and the value of the 100 shares of Southern Pacific which he did not take back, I ask you whether it is not a fact that the total amount that he put into the account was $73,439.71?

Mr. Herrick.— Don't answer for a moment. It is objected to. It assumes what Josephthal put in there —

The President.— This is merely asking for a summary.

Mr. Herrick.— No. It is a little more than that. It is an assumption that he put in what Josephthal paid.

The President.— Change it. Including what Josephthal paid, doesn't that sum up to what is this figure?

Mr. Kresel.— $75,431.71?

A. No.

The President.— Well, what does it?

By Mr. Kresel:

Q. The value of the 200 shares of Big Four was $13,700. We have agreed on that, haven't we?

Mr. Marshall.— As of what date?

Mr. Kresel.— We have agreed on that.

The Witness.— At a date, 57.

Q. As of the date when he put them in. That is the date I am taking? A. Yes, sir.

Q. The date when you put in the 100 Southern Pacific —

The President.— Don't you think you can get at it quicker if you ask him the difference between your figures and his?

Mr. Kresel.— I will accept your Honor's suggestion.

By the President:

Q. What do you make it up? A. We received $21,000 in cash from the Governor; that is in payments.

Q. Yes. A. And we received $26,739.71 from Mr. Josephthal.

Q. That is, $47,000? A. Which totals $47,739.71.

Q. Now, he asks what more you received in the stock, taking the stock at its market value at the time you received it? A. 200 shares CCC at 57.

By Mr. Kresel:

Q. Not at 57. One was at 80 and one was at 57, $13,700.

The President.— $13,000 and something.

The Witness.— $13,000.

By Mr. Kresel:

Q. $13,700, isn't it? A. Yes.

Q. And the $12,000 for the Southern Pacific? A. He took the money for the Southern Pacific.

Q. Yes, I know. We have given him credit on the other side for the $12,000? A. Oh, I didn't understand that. $73,439.71.

Q. Right. Now, he took out in cash $33,200, didn't he?

The President.— We have had that.

Mr. Kresel.— We have had that. I want to start with that point.

The President.— Start with it. Say he did and go on with your question.

By Mr. Kresel:

Q. And in addition to the cash, there was taken away the 500 shares of CCC, weren't there, at the end of the account? A. Yes.

Q. And about the date it was selling at 40, wasn't it? A. About.

Q. Which was worth $20,000? A. Yes.

Q. That is, between the 27th of June, 1910, and the 15th of July, 1913, Big Four had dropped from 80 to 40? A. Yes.

Q. And they also took away 200 Smelters? A. Yes, sir.

Q. Which at that time was selling at 59 1-8, making a value of $11,825? A. Yes, sir.

Q. So that the total of the stocks he took away was $31,825?

Mr. Marshall.— Who took them away?

Mr. Kresel.— Josephthal.

The President.— They would go to Josephthal.

By Mr. Kresel:

Q. Isn't that right? A. Figuring at the prices he bought them.

Q. Figuring at the prices that they were worth on the day he took them away? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. Adding the value of the stocks taken away, $31,825 to the cash that he had taken out, $33,200, the total amount that he had taken out of the account was $65,025.

Mr. Herrick.— One moment. He didn't take stock out of the account.

Mr. Kresel.— Well, that was taken out by Josephthal.

The President.— It was taken out.

By Mr. Kresel:

Q. Assume that I have amended the question in that way, is that right? A. Yes, sir.

Q. So that he put into the account $73,439.71, and there was taken out of the account $65,025, making a loss of $8,414.71.

Mr. Herrick.— One moment. It has not been taken out. It is a new account opened.

The President.—What is the difference, if you subtract one from the other, it shows the loss.

Q. Is that right? A. Yes.

Q. Now, Mr. Fuller, when was the first time after the 15th of July, 1913, that you saw Governor Sulzer? A. I think it was the 30th of July.

Q. The 30th of July, did you say? A. 1913.

Q. Was that before you were first subpoenaed to appear before what was known as the Frawley Committee? A. It was the day after.

Q. The day after? A. Yes, sir.

Q. And between the 15th and the 30th of July, had you had any communication with Governor Sulzer with reference to his account in your concern? A. I had not.

Q. Where did you see Governor Sulzer on the 30th of July? A. At the Executive Mansion, in Albany.

Q. Did he send for you? A. He did.

Q. Did he telegraph or write to you? A. No.

Q. Called you on the telephone? A. No; his office called me on the telephone.

Q. You were called from New York? A. Yes.

Q. And you went up there to see him? A. I did.

Q. Did you go there alone? A. No.

Q. You had a talk with the Governor then? A. I did.

Q. Was there anybody else present at this talk between yourself and the Governor? A. No.

Q. What was the conversation you had with him? A. I went into his library after dinner. I said to him, that I had been subpoenaed to appear before the Frawley Committee with my books; that I felt any client doing business with me was entitled to all the protection that the law would give him; that I had consulted with my attorney, and if he advised me that I could legally refuse to answer these questions and produce my books, I would do so.

Q. Is that all? A. All the conversation that took place?

Q. Yes? A. No.

Q. Well, go on as far as your memory serves you? A. You want me to tell what the Governor said to me?

Q. Certainly; we want the entire conversation. A. The Governor said to me that Mr. Marshall was expected to meet me there. Mr. Marshall was not there. He stated that Mr. Marshall's opinion was that they could not force me to answer these questions, or produce my books, and that there was some question as to whether this Committee had been legally organized, etc., and I told him that I should depend upon my attorney in regard to that. That was I think, all that was said in regard to my testifying. Governor Sulzer went on, and he said to me: "Mr. Fuller, you know that these securities were Mrs. Sulzer's, don't you?" And

I said, " No, I didn't." " Well," he said, " these securities belonged to Mrs. Sulzer when I brought them to you; she had a loan with the Carnegie Trust Company; they required me to give a note every three months, and it was very annoying, so I took the securities down to you and borrowed the money from you." I said to Governor Sulzer, " That may all be true. There is no evidence of anything of that kind on my books, and cannot be proven by me. If it is true, you will have no trouble in proving it, as the books of the Carnegie Trust Company must be a matter of record."

I think that was about all of the conversation that we had. Oh, he offered to furnish me with an attorney and I thanked him and told him no, that I would rather depend upon my own attorney. He said that any expense that I was put to he would pay.

Q. Did he suggest the name of an attorney to you? A. He did not. He asked the name of my attorney.

Q. I mean, did he suggest the name of the attorney he would supply you? A. No.

Q. And for what purpose was he to supply you an attorney? A. I did not ask him.

Q. And he didn't state? A. He did not.

Q. Did you see Mr. Marshall that evening? A. No.

Q. You have stated as far as you can recall the entire conversation? A. I have.

Q. Did the Governor say to you at all why he had sent for you? A. No.

Q. Didn't you inquire? A. I supposed he wanted to go over the account.

Q. Did you go over the account with him? A. No. I told him that those two items were there.

Q. What two items? A. The $10,000 cash and the $6,000 cash which was paid to me.

Q. What did he say about those two items? A. I don't think he made any comment. He said it was all right.

The President.— How did the subject of those two items come up?

Mr. Kresel.— That is right.

The Witness.— I told him that was probably what the Frawley Committee were looking for.

Q. What did he say about those two items? A. He did not make any comment.

Q. Did I understand you to say that among other things those two items were all right? A. That is what I understood him to say. That is the best of my recollection.

Q. Was there anything else said about that account except to talk about these two items? A. Not that I recall at the moment.

Q. Did you have a transcript of the account with you? A. No.

Q. Was there anything said about the entry in the account of December 30, 1912, purporting to be a loan? A. No.

Q. That was not discussed? A. No.

Q. Now, as you came away from that talk with the Governor, had the Governor expressed a wish that you should refuse to testify before the Frawley committee?

Mr. Herrick.— Wait a minute. That is objectionable.

The President.— Did he say —

Q. In substance, whether he said that?

The President.—Ask him what he said on the subject if anything.

Q. What did he say on the subject if anything? A. He advised me of Mr. Marshall's opinion and my lawyer told me to ask him that question.

Q. Whether you should testify?

The President.— What do you mean?

The Witness.— Giving Mr. Marshall's opinion and cite the cases Mr. Marshall depended upon for his opinion.

Q. After the Governor told you it was Mr. Marshall's legal opinion that the Frawley Committee was not legally organized or appointed and therefore you were not compelled to testify before it, did he ask you to follow Mr. Marshall's advice?

Mr. Herrick.— That assumes he told him he was not compelled to testify. He hasn't said anything of the kind.

The President.— You said in a general way that he gave you Mr. Marshall's opinion. Did he state what Mr. Marshall's opinion was?

The Witness.— Yes, sir.

Q. Now tell the Court what he said was Mr. Marshall's opinion on the subject?

The Witness.— I think I have already stated that Mr. Marshall's opinion was that this Committee was not legally organized and they had no right to inquire into the private affairs of my firm, or something of that kind.

Q. And therefore —

The President.— Now ask, did he advise you as to what course you should pursue?

The Witness.— No, sir.

Q. Did he suggest what course you were to pursue? A. In so far as he quoted Mr. Marshall's opinion.

Q. Did he in substance ask you to follow Mr. Marshall's advice? A. No.

Mr. Herrick.— Wait one moment.

The Witness.— I told him I should follow my own attorney's advice absolutely.

Q. I know what you told him. I am trying to find out what he told you? A. I am trying to tell you.

Q. Did he in substance ask you or suggest that he would like to have you follow Mr. Marshall's advice? A. He did not.

Q. Either in so many words or in substance? A. He did not.

Q. When you left the conference did you understand that Governor Sulzer was desirous that you should not testify before the Frawley Committee?

Mr. Herrick.— One moment.

The President.— Objection sustained.

Q. Will you state, Mr. Fuller, what it was that Governor Sulzer offered to supply you a lawyer with — what for?

Mr. Herrick.— What is that question. Wait one moment. What is the question?

The President.— Ask him what he said on that subject if anything.

Q. Just tell us, if you please, as far as you can recall, what Governor Sulzer said about supplying you with a lawyer? A. He said he would be very glad to supply me with a lawyer if I wanted it. I thanked him and said I would depend on the advice of my own lawyer.

Q. Yes, but didn't you inquire of the Governor what he meant by offering to supply you with a lawyer? A. I did not.

Q. What was the lawyer to do for you? A. I don't know.

Mr. Herrick.— Wait one moment.

The President.— Objection sustained. What the respondent said, or the witness said to him is material; not what he thinks the lawyer was to be for.

Q. Now, did Governor Sulzer either in substance or so many words at this conversation say to you that it would be detrimental to his interests if you did testify to this account before the Frawley Committee?

Mr. Herrick.— That is objectionable.

The President.— Yes. Did he say anything to you on the question of whether your testimony or your books would be personally injurious to him?

The Witness.— He did not.

Q. Either that or in substance? A. No.

Q. Was there anything said between you as to the probable effect of your testimony? A. No.

Q. Before going to see the Governor, you say that you had taken the advice of your own attorney? A. I had.

Q. Who, by the way, was ex-Judge Olcott? A. Yes, sir.

Q. Did you tell Governor Sulzer what advice your own attorney had given you? A. He had not expressed any opinion at that time.

Q. Up to that time? A. No. sir.

Q. Now, this was on the 13th of July, 1913? A. Yes, sir.

Q. When did you next see the Governor? A. I think it was on the 11th of September.

Q. Had you had any communication with the Governor between the 30th of July and the 11th of September? A. No, sir.

Q. Or had you received any letter or telegram from him with reference to this account? A. No.

Q. Or your testifying about it? A. No.

Q. You did testify before the Frawley Committee? A. I did.

Q. Do you remember the date when you testified? A. It was the first week in August some time.

Q. It was the 8th of August, wasn't it? A. My recollection was it was on Wednesday, but I am not sure.

Mr. Fox.— If you have the record read it, Mr. Kresel.

Q. You appeared before the Frawley Committee twice, didn't you? A. I did.

Q. Do you remember the day of your first appearance?

The President.— He said he thinks it was Wednesday, the first week of August. Have you that date?

Q. August 6th was your first appearance, as far as I can find out, and August 8th was your second appearance? A. Two or three days afterwards.

Q. When you appeared before the Frawley Committee you were accompanied by ex-Judge Olcott, your attorney? A. The second time.

Q. The second time? A. Yes.

Q. And afterwards you were sworn and, before you testified, do you recall that Judge Olcott made a statement to the Committee? A. I do.

Q. Among other things that Judge Olcott said at that time was a statement that you had had a conference with the Governor since your last appearance before the Committee, and that the Governor had agreed that your lips should be unsealed, or words to that effect? A. Yes, sir.

Q. Now, had you had any other conference with the Governor between the 30th of July and the 8th of August? A. I had a conference with an attorney, not the Governor.

Q. With an attorney? A. Yes.

Q. An attorney representing the Governor? A. Yes.

Q. But you had had no conference with him direct? A. No.

Q. Now, you saw the Governor, you said, on the 11th of September? A. I think that was the date.

Q. Wasn't the date when you testified before the Board of Managers? A. I don't think so.

Q. Didn't you see the Governor at 115 Broadway, on the very day when you testified before the Board of Managers? A. I saw him at 115 Broadway, but I cannot swear that it was the same day that I testified before the Board of Managers.

Q. You saw him before you testified before the Board of Managers, didn't you? A. I could not swear as to that. My best recollection is that it was on the 11th.

Q. That you saw him? A. That I saw him.

Q. And of course you remember, don't you, that you testified before the Board of Managers on the 12th? A. I do not remember the date, no, sir.

Q. Is it your best recollection now that you saw the Governor at his office, 115 Broadway, before you testified before the Board of Managers?

The President.— You have got the date somewhere. You can fix that yourself.

Mr. Kresel.— I want to fix it by the witness.

The President.— He says he can't recollect the date.

Mr. Kresel.— The day is not material, except in so far as whether it was before or after he testified; that is all I am trying to get.

The Witness.— I think it was before I testified before the Managers' Committee.

Q. Now, was there anybody else present at this conference between yourself and the Governor at his office? A. No.

Q. What was that conversation? A. He wanted a full transcript of his account to give to Judge Herrick, and asked me if I would come to Albany if he wanted me to explain the account to him.

Q. Is that all? A. That is all.

Q. Was there anything said between you as to whether you should or should not testify before the Board of Managers? A. I told him that I had received a subpoena to appear before the Board of Managers, and that it was a question in my mind if it was wise for me to refuse, I thought I should answer any questions that they asked me.

Q. And what did the Governor say? A. He did not say anything.

Q. Now, between the 15th of July and the 18th of September, 1913, have you received any letters from Governor Sulzer? A. No.

Q. Or any telegrams? A. No.

Q. Just one more question, Mr. Fuller: Did you appear before Governor Sulzer early this year, with reference to certain legislation which was pending in the Legislature affecting the New York Stock Exchange? A. I did.

Q. At that time Governor Sulzer's account was still in your office? A. It was.

Mr. Kresel.— That is all.

Cross examination by Mr. Hinman:

Q. Reference has been made here to Judge Olcott; of what firm is he a member? A. Olcott, Bonynge, Gruber & McManus.

Q. What is the business or occupation of that firm? A. Attorneys at law.

Q. How long has that firm acted as attorneys for you and your firm? A. Ten years.

Q. When you were subpoenaed the first time before the Frawley Committee, did you appear? A. I did.

Q. Were you represented there at that time by any attorney? A. I was not.

Q. Were you again subpoenaed before the Frawley Committee? A. I was.

Q. And where was that hearing held? A. The same place in one of the public buildings in New York city.

Q. Who went there to that hearing with you? A. Judge Olcott.

Q. Did you hear what he said to the Committee, when you were called as a witness? A. I did.

Q. On that occasion? A. I did.

Q. Who was present as attorneys for or assuming to represent the Frawley Committee on that occasion? A. Mr. Richards.

Q. What is Mr. Richards' first name?

Mr. Kresel: We will concede it is Eugene Lamb Richards.

Q. Was Mr. Richards acting as counsel to that Committee at that time, as you understand it? A. He was.

Q. Did you hear Judge Olcott state to the Committee there at that time, did you hear what he said to the committee at that time with reference to your testimony? A. I did.

Q. Did Mr. Olcott there at that time make this statement after you had been called to the stand, and the oath administered,— is this substantially his language: "I was not present at the hearing before. Before you proceed with his examination, through your own already expressed courtesy of the commission, and that of Mr. Richards, I want to say a word on the subject of his refusal to answer questions the other day, and the fact that he now presents himself ready to answer all questions which are asked him. His refusal the other day was based upon the custom, which is to them a law and a moral right of brokers, never to reveal any of their books so far as their customers' accounts are concerned. Since that, we have had a conference with Governor Sulzer and his representatives, and the Governor agrees that, without further contest, without any contest on his part, that Mr. Fuller's lips should be unsealed. Now, having that waiver from the customer, Mr. Fuller feels at liberty to answer your questions.

"I thank you for the privilege of this statement of his position in the matter."

Did you hear that? A. I did.

Q. What books, papers and documents, if any, did you have before the Frawley Committee that day? A. Everything that they asked for.

Q. Were those papers, books and documents examined by that Committee and before that Committee that day? A. Some of them.

Q. And did they examine such of those as they desired to? A. They did.

Q. Did you answer fully and frankly all questions put to you there that day? A. I did.

Q. And do you say that you were again before another board or body in connection with this matter? A. I am.

Q. When was that?

By Mr. Marshall:

Q. You were? A. I was.

By Mr. Hinman:

Q. When was that? A. Somewhere about —

Mr. Kresel.— The date was September 12th.

Q. On or about September 12th was it, 1913? A. I went to that office before that date.

Q. What was the occasion of your going to that office before that day? A. I returned to New York to find that a Mr. Kresel had called me on the telephone in regard to Governor Sulzer's matters.

Q. Do you know who Mr. Kresel was and is? Did you know at that time? A. I did not.

By the President:

Q. Do you mean the counsel who has been examining you? A. Yes, sir.

By Mr. Hinman:

Q. You did not know at that time? A. At that time I did not.

Q. Who he was? A. No, sir.

Q. Did you know at that time what connection, if any, he had with this matter? A. Not until after I entered his office.

Q. When the word was communicated to you that Mr. Kresel wanted to see you at his office, what did you do? Go to his office? A. I called him on the telephone.

Q. And, as a result of that conversation over the telephone, did you go to his office? A. He said he would come to my office or I might come down there. I asked him where his office was and he told me, I think, 37 Wall street; and as I was in the Exchange, it was just as easy for me to go there as it was to go to my own office, so I went to his office.

Q. Did you have a conversation with him there? A. I did.

Q. Regarding what? A. The transcript of my account of Governor Sulzer's.

Q. Did you answer the inquiries that he made of you that day? A. Some of them I did, as best I could.

Q. How long was that before you were examined before the Board of Managers, as you have testified? A. I think that was on Tuesday, the 9th, and I appeared before the Committee of Managers on Friday, the 12th.

Q. Were you subpoenaed to appear before the Board of Managers? A. I was.

Q. Where did you appear before the Board of Managers? A. 37 Wall street.

Q. In whose office was it? A. Mr. Kresel's.

Q. Who was present on that occasion? A. Why, Mr. Kresel was there, Mr. Levy was there, the other gentlemen I do not know.

Q. What Levy was that?

By the President:

Q. Is he the Chairman of the Committee? A. Yes, sir; Assemblyman or Senator.

By Mr. Hinman:

Q. Assemblyman Levy? A. Yes, sir.

Q. What, if any, books, papers or documents did you have with you that day? A. I took a transcript of the account, as they asked for it. The Frawley Committee asked me for a transcript of the account from January 1, 1912, to date. The Managers' Committee asked me for a transcript of the account from the opening of that account to date. I took that transcript with me.

Q. Did you exhibit it to the Board of Managers that day? A. I gave it to Mr. Kresel.

Q. And did he keep it? A. He did.

Q. Were you examined by question and answer at that time? A. I was.

Q. Under oath? A. I think Mr. Levy administered the oath.

Q. Who questioned you at that time? A. Mr. Kresel.

Q. Did you fully and frankly answer such questions as were put to you there that day? A. To the best of my ability.

Q. Did Judge Olcott give you any opinion, or express his opinion at any time as to whether or not you could be compelled, under the law, to give testimony before the Frawley Committee regarding this account? A. He did.

Mr. Kresel.— I submit, if your Honor please, that is immaterial.

The President.— How is that material?

Mr. Hinman.— Only material on the proposition that —

The President.— Call your next.

Mr. Hinman.— Nothing further.

Examination by Mr. Kresel:

Q. Mr. Fuller, this account was also known on your books as No. 3, wasn't it? A. It was.

Q. When was it christened No. 63? A. I think always.

Q. It had that number all the time? A. Yes.

Q. Do you know J. B. Gray, of Fuller & Gray? A. Slight — I do.

Q. Did you talk with him on the telephone last night? A. I did not.

Q. Did the account of Governor Sulzer, or William Sulzer, on your books during this entire period, appear under the name of William Sulzer? A. On every page of every ledger that it has ever been entered in, the name of William Sulzer appears.

Mr. Kresel.— That is all.

The Witness.—Am I excused now?

The President.— Does either side wish any further attendance of this witness?

Mr. Herrick.— We do not.

Mr. Kresel.— Not as far as we are concerned.

Senator Thompson.— I would like to ask the witness a question.

The President.— Just wait a moment until we see if counsel wish the witness to remain here afterwards.

Mr. Herrick.— We don't. He can take his books, too.

The Witness.— They want to keep some of my books. What are my privileges in regard to the matter?

The President.— I suppose they will keep the books. They will be kept in court, if necessary. The Court will endeavor to see that your books are not kept an unnecessary length of time. and they will be taken care of.

The Witness.— What about this particular book they want to keep?

The President.— What is that?

The Witness.— That is my blotter.

Mr. Kresel.— I have no objection to your sealing any part of that except that one particular part.

The President.— We will take care of that.

The Witness.— Thank you.

The President.— Now see what Senator Thompson wants?

Senator Thompson.— Why do you sometimes keep accounts in your books by numbers instead of the names of the customers?

Mr. Hinman. —That is objected to on the ground it doesn't appear they do that.

The President.— He says that in this account there was both the number and the name.

Senator Thompson.— If there is objection, I don't care.

The President.— Was there a number and name both on this account?

The Witness.— There was.

The President.— Now answer the Senator's question, why you keep accounts by numbers as well as names?

The Witness.— The original entry in my office is made on the blotter. That is posted into the ledger. The man that runs the ledger desk is fifteen feet away from the man that runs the blotter, and rather than call out the name across the office of a man or a client, we give it a number, so that posting the transaction for Sulzer, the man on the blotter would call out "Account 63." The ledger man would turn to 63 on the ledger, or William Sulzer's account, and enter there the entry that the blotter man calls off to him.

Senator Thompson.— So that you give all accounts a number as well as the name?

The Witness.— Not all, no. Then again, in transmitting an order, instead of giving the name, for our own convenience we often number the accounts.

Senator Thompson.—What is the reason some accounts have numbers and others do not? That is what I want to know?

The Witness.—Well, I suppose we feel it is not wise to have people know that we are doing business for certain people, and therefore we number certain accounts.

The President.— You mean other people you are not so particular about?

The Witness.—Yes, sir.

Senator Thompson.— Do you have any accounts that are numbered but no name appears?

The Witness.— No.

Senator Thompson.—You don't have any such accounts?

The Witness.— No.

Senator Thompson.— Do you know what other brokers do?

The Witness.— I heard one testify here yesterday, he had an account with no name on the ledger.

Senator Thompson.— Is that a custom among brokers in New York?

The Witness.— It is not my custom.

Senator Thompson.— I am asking your knowledge?

The Witness.— I do not know.

The President.—Are you familiar with the custom of brokers on the subject, or is there any general custom?

The Witness.— I think I am familiar with it.

The President.— Then answer.

The Witness.—What is the question, please?

The President.— Is it the custom to have accounts without any names, but only numbers?

The Witness.— No.

Senator Thompson.—What is that? I did not hear?

The Witness.— No, it is not the custom.

Senator Sage.— May I ask the witness a question?

The President.— Senator Sage.

Senator Sage.— May I ask the witness if it isn't true that most speculator's accounts are numbered in broker's offices?

The Witness.—Yes.

Senator Sage.—And that as a rule inactive accounts or accounts in which few transactions are made and those practically only for investment, are not numbered?

The Witness.— No.

The President.—You mean —

The Witness.— No, they are not, an inactive account.

The President.—Anything else?

(No response.)

The President.— That is all, witness.

(Witness excused.)

Mr. Stanchfield.— I will call Mr. Pinkney.

Mr. Brackett.— Let the witness seal up that part of the book to his own satisfaction.

The President.— That will be attended to.

The Clerk.— Mr. Pinkney, you do solemnly swear that the evidence which you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer, as Governor of this State, shall be the truth, the whole truth and nothing but the truth, so help you God?

The Witness.— I do.

The Clerk.— What is your full name?

The Witness.— Cornelius S. Pinkney.

CORNELIUS S. PINKNEY, a witness called in behalf of the Managers, having been first duly sworn, in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Stanchfield:

Q. Where do you live? A. New York City.

Q. What is your occupation? A. I am a lawyer.

Q. Where is your office located? A. In the Woolworth Building.

Q. The Woolworth Building? A. Yes; I was formerly at 115 Broadway.

Q. Where was your office in October and November, 1912? A. 115 Broadway.

Q. Was that the same building in which the respondent, Governor Sulzer, then had his offices? A. It was.

Q. Are you acquainted with Governor Sulzer? A. I am.

Q. How long have you known him? A. I have had a speaking acquaintance with him for several years. I do not know how long I have known him.

Q. On or about the 1st of November, while he was a candidate for Governor, in the fall of 1912, did you go to his office to see him? A. I did.

Q. Did you have an interview with him at that time? A. I did.

Q. Where was he? A. He was in his office, 115 Broadway.

Q. Was there anyone else in the room at the time save you two? A. There was not.

Q. What did you say to him at that time? A. I went up there. I had an engagement with him for about 12 o'clock in the day. He was very busy at the time. I could not see him. I went in later. I don't know just exactly what hour it was; and I talked to him about the conditions of the campaign, and I asked him whether he was in need of any money. He said that he had no objections to taking it, in fact he would like to have contributions as long as the persons who gave it to him felt as though they could afford it, and I sat down at the desk and started to write a check.

Q. Now, what was the number of the check upon which you first started to write? A. I could not tell you that.

Q. I hand you check 849 and ask you whether or not that will refresh your recollection so as to enable you to state the number of the check upon which you first started to write? A. It will, because the check which I first started to write was 850, because I had two checks in my hand; I tore them apart, and I see by looking at this check that I used the lower one first.

Q. So you started first then to write upon check No. 850? A. 850; I had two in my hand; I tore them apart.

Q. What did you start to write upon 850? A. I started to write " Pay to the order of William Sulzer."

Q. And while you were engaged in writing " William Sulzer " what if anything occurred? A. He told me not to make the check to the order of William Sulzer but to make it to the order of Louis A. Sarecky, spelling out such name.

Q. Spelling out the last name Sarecky? A. For me.

Q. Thereupon what did you do? A. I wrote the check as he asked me to.

Q. And is that the check you hold in your hand? A. That is the check I hold in my hand; I gave it to him personally.

Mr. Stanchfield.— I offer it in evidence.

The President.—Any objection?

Mr. Marshall.— No objection.

(Check offered in evidence received and marked Exhibit M-100.)

Mr. Stanchfield.— "No. 849," with the name "C. S. Pinkney" printed at the end. "New York, November 1st, 1912. Columbia Trust Company, New York, pay to the order of Louis A. Sarecky, $200, C. S. Pinkney."

Q. You say that you handed that to him personally? A. I did.

Q. Now, as you started to go out of the office, did candidate Sulzer, as he was at that time, say anything to you? A. Yes, sir, he did.

Q. What did he say? A. He said that this was a personal matter between himself and myself, that he considered anything like this as a gift, I think was the word he used, and that he did not intend to make any record of any kind or account for the check. If I remember exactly his words were "I do not intend to account for these kind of gifts, they must be made to me personally; don't say anything about it; simply between you and myself."

Q. Is that all? A. That is all.

Mr. Stanchfield.— You may examine.

Cross-examination by Mr. Hinman:

Q. Do you recall what day in the week this was? A. No, sir, I cannot.

Q. Do you recall what day of the month it was? A. Yes, November 1st.

Q. Are you able to fix that date from anything except the

date of the check? A. No, sir, not unless I look at my calendar in the office.

Q. Have you looked at your calendar in the office? A. I have not.

Q. In connection with this? A. I have not. I did not know I was going to testify until late yesterday afternoon and I have not been to my office since then except to get the check.

Q. When was the first time after November 1, 1912, that your attention was called to this transaction? A. To-day; practically yesterday when I was served with the subpoena.

Q. From November 1st, from the moment that you left Mr. Sulzer's office on November 1, 1912, down until to-day have you mentioned the subject of that conversation to anyone? A. Yes, sir, I had.

Q. When first? A. Well, I had mentioned — I don't know just when I talked the first time.

Q. About when? A. I should judge about two weeks ago.

Q. From November 1st, the time you left Mr. Sulzer's office after writing this check, had you mentioned that conversation to anyone prior to two weeks ago, or about two weeks ago? A. No, sir, I had not.

Q. To whom did you first mention that? A. I could not say; I don't think I ever mentioned it.

Q. What is your best recollection as to the name of the person to whom you first mentioned it? A. I do not think I ever mentioned the gist of the conversation until I was outside in the ante room fifteen minutes ago.

Q. Let me get it again. Then from November 1, 1912, until yesterday you did not mention that conversation to anyone? A. No, sir, I did not; unless it was in my own family.

Q. You never had referred to it, did you, to anyone? A. Unless it was my own family, somebody like that.

By the President:

Q. Do you mean you did not say anything about any part of this conversation or the last part? A. Any part of it, your Honor.

Q. That you had gone there and asked him if he wanted the

money? A. I may have spoken in a general conversation around the Manhattan Club. I think I came back and several weeks ago when the question was up who had contributed —

Q. You said that you had contributed? A. I simply said I had contributed but I had nothing to say about this conversation.

By Mr. Hinman:

Q. When was the first time and where was it that you first mentioned the fact, that you mentioned to anyone that you had contributed in this manner? A. I suppose —

Q. Not what you supposed, give us your recollection? A. Maybe as long —

Q. Not maybe, but give us your recollection. A. When the Frawley committee first started.

Q. When did the Frawley committee first start, as far as you know? A. I should say three months ago.

Q. How long was it after the Frawley committee started that you had this talk? A. Maybe a week — two weeks after.

Q. How long after you knew the Frawley committee started was it that you had this first talk? A. About two weeks after. I said that I had contributed to somebody, in the Manhattan Club; I could not tell you the names of anyone to whom I said it.

Q. Do you remember anyone who was present? The name of any person who was present in the Manhattan Club when you made that statement? A. Judge Conlon.

Q. Did you make it in his presence? A. Yes, sir.

Q. Judge Conlon heard you say it? A. I believe so. I don't know what he heard.

Q. Do you know he did? A. I couldn't say about that.

Q. Did Judge Conlon say anything to you in connection with it? A. No, sir.

Q. Who else was present besides Judge Conlon? A. I guess Judge Delehanty.

Q. Not guess. Your recollection? A. That is pretty hard to say, who was there.

Q. Then you simply told them you had made a contribution? A. Yes, sir.

Q. That was all that was said at that time on that subject? A. Yes, sir.

Q. When after that did you mention that subject to anyone, when next? A. I have not said anything about it.

Q. To anyone? A. No, sir.

Q. And the first time you had mentioned it to anyone, then, was about fifteen minutes ago. A. Yes, sir.

Q. Who was it you mentoned it to then? A. Mr. Richards.

Q. One of the counsel for the Board of Managers? A. Yes, sir.

Q. How long have you known Mr. Richards? A. I don't know him. I just met him to-day.

Q. When were you subpœnaed as a witness? A. Yesterday.

Q. By whom? A. I don't know who served the summons.

Q. Where were you? A. I was in my office.

Q. Had you had any communication with anyone in reference to this, until the subpœna was served? A. I had not. I had been out of town.

Q. Since when? A. Two weeks, except I have been in for business. I have been living in New Jersey.

Q. So that when you came up here and up to about fifteen minutes ago, so far as you know, no one knew what you were going to testify to? A. Absolutely.

Q. On this day, when you were in Mr. Sulzer's office, which room were you in? A. I was in the far room. You go into the room, and, as you enter, the next room to the left.

Q. That is, you enter an anteroom and pass to the left? A. Pass to the left.

Q. Who did you see in the anteroom? A. I saw Mr. Sarecky.

Q. How long have you known Mr. Sarecky? A. I don't know him.

Q. How do you know Sarecky? A. Because I had been introduced to him the day before.

Q. Where were you when you were introduced to Louis A. Sarecky the day before? A. I think in the lobby.

Q. Where was it? Not what you think? A. I couldn't say.

The President.— Well, counsel, is it worth while to work overtime in this case?

Mr. Hinman.— I think so.

The President.— I doubt it.

Mr. Hinman.— Of course I shall have to abide by the wishes of the Court, and I shall.

The Witness.— I don't know where it was.

The President.— In your recollection?

The Witness.— I think it may have been in my own office. My secretary made the engagement for me to come up there that day through Mr. Sarecky. I walked in the office and met Mr. Sarecky. I had seen him the day before I think in the lobby.

By Mr. Hinman:

Q. Where had you seen him the day before? A. Downstairs at the cigar store, as near as I can remember, but I am not sure that I was introduced to him at that time.

Q. You stated a moment ago, though, you were? A. I think so.

Q. By whom? A. I couldn't say.

Q. Who ushered you into the Governor's office? A. I should judge it was Mr. Sarecky. I talked to Mr. Sarecky first when I came in the first time. The Governor then was busy; he was engaged with three or four people, and I couldn't wait. I had to go down to my own office, and when I came back, which was after lunch, Mr. Sarecky was then there, and he took me in there and I left the office alone, closing the door.

Q. You are sure about that? A. I am absolutely sure.

Q. So there was no one present and no one heard this conversation between you and the Governor? A. Absolutely.

Q. Who else did you see in the office that day besides Mr. Sarecky? A. That is all I could remember.

Q. Out of which door did you pass when you left the office? A. Out of the front door.

Q. Directly into the hall? A. Yes, sir; the main entrance.

Q. Didn't go through this anteroom? A. No. An outer office. There is no anteroom there. It is just an outer office. You enter from the lobby into an office; you go to the left, and you are in Governor Sulzer's private chambers.

Q. Passing to the left? A. Passing to the left.

Q. When you left the office you left by the same way that you entered? A. I think so. I would not be sure. I was not there more than ten or fifteen minutes. I don't remember how I came out.

Q. What kind of a desk was it that you wrote this check at? A. A large desk he has there in the room.

Q. What kind of a desk? A. I couldn't tell you. I didn't notice it.

Q. Did you write the check standing or sitting? A. Sitting at his seat.

Q. Did you sit at the desk Governor Sulzer was using? A. Yes, sir.

Q. He got up and gave you his chair? A. He was walking up and down all the time I was in there.

Q. Do you know whether that check was given to Sarecky or not? A. I know it was not given to Sarecky. It was given the Governor personally.

Q. Do you know whether Sarecky was there? A. Not as long as I was in the room.

Q. Have you examined the check to see whose endorsement is on it? A. I have.

Q. Is the name of Sarecky on the check? A. There is. That is, his name is on the back of the check, but I don't know his signature.

The President.— That is all, witness. Is there anything else?

Mr. Stanchfield.— Harvey C. Garber.

The Clerk.— You do solemnly swear that the evidence which you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer, as Governor of this state, shall be the truth, the whole truth and nothing but the truth, so help you God.

The Witness.— I do.

The Clerk.— What is your full name?

The Witness.— Harvey C. Garber.

HARVEY C. GARBER, a witness called in behalf of the Managers, having been first duly sworn, in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Stanchfield:

Q. Mr. Garber, your residence is where, Ohio? A. Columbus, Ohio.

Q. And your occupation? A. Vice-president of the Rawlston Steel Car Company.

Q. You were at some time a member of Congress? A. I was a member of Congress four years.

Q. Do you know the respondent, William Sulzer? A. I do.

Q. Did you make a contribution to him during his candidacy for Governor? A. I did.

Q. In the fall of 1912? A. I did.

Q. How much? A. $100.

Q. Did you make it in cash or by check? A. Made it by check.

Q. Did you transmit it to him by mail or in hand, personally? A. By mail.

Q. Have you the check with you? A. I have.

Q. Will you produce it please?

(Witness produces a paper.)

Q. Is that the check? A. Yes, sir; and the stub with it.

Mr. Stanchfield.— I offer that in evidence.

Mr. Herrick:— Let me see it please.

(The document was handed to Mr. Herrick.)

(The check referred to was offered in evidence, received and marked Exhibit M-101.)

Mr. Stanchfield.— (Reading.)

"COLUMBUS, OHIO, *October* 3, 1912.

"CITIZENS TRUST & SAVINGS BANK

"Pay to the order of William Sulzer one hundred dollars.

"HARVEY C. GARBER."

Q. Now, Congressman, that is indorsed "William Sulzer" and then under it "Louis A. Sarecky."

Mr. Hinman.— Indorsed with a stamp.

Mr. Stanchfield.— I think it is.

Mr. Hinman.—And the bank stamp there, if you will read that please.

Mr. Stanchfield.— Mutual Alliance Trust Company.

Mr. Hinman.— The date it was in the Mutual Alliance.

Mr. Hinman.— October 8, 1912, the check being dated October 3d.

Q. Congressman, did you send with the check a letter? A. I did.

Q. Did you keep a copy of the letter? A. I did not.

Mr. Stanchfield.— Will you gentlemen produce it?

Mr. Marshall.— We haven't it.

Q. Can you give us the substance of it? A. I can.

Q. Briefly state that, please. A. "I congratulate you upon your nomination. I herewith enclose check for $100. I hope you will be elected. Sincerely yours, Harvey C. Garber."

Q. Did you receive a response to that letter? A. I did.

Q. Did you keep the reply? A. I may have the reply, but —

Q. Have you it with you? A. I have not.

Q. Do you recollect the substance of it? A. I do.

Q. What was it? A. I thank you for all you have said and all you have done, something of that sort.

Q. See if I can refresh your recollection. I will read a letter. I might say some read very, very many thanks for all you have said and done and some read many thanks. Your check being for $100, how did yours read? A. I think that the letter simply stated he thanked me for what I had said and what I had done.

Q. Did it make any allusion whatever to the fact that there was a contribution enclosed in it? A. It didn't, only to that extent.

Mr. Stanchfield.— That is all, Mr. Congressman, unless they desire to cross examine you.

Mr. Hinman.— I assumed the Court will take the language of the letters from the record instead of Mr. Stanchfield's recollection.

Cross examination by Mr. Hinman:

Q. Mr. Garber, how many times were you in Congress? A. I was in Congress two terms, five sessions. There was an extra session.

Q. During that time did you become acquainted with Mr. Sulzer? A. I became acquainted with him that time, but knew him before that time.

Q. How many years have you known him? A. I knew him probably a year or two before that, that was in 1902 when I was elected.

Q. What had been your relations with him from the time subsequent to your becoming acquainted with him? A. Well, simply friendly, as a member of Congress.

Q. Where were you when you learned that Mr. Sulzer had been nominated for Governor? At Columbus, Ohio.

Q. When and in what way did you learn that he had been nominated? A. Through the "Cincinnati Enquirer."

Q. What day did you learn that? A. I think on the 2d day of October.

Q. As a matter of fact he was nominated in the night of the 2d, or the early morning of the 3d of October? A. The check went immediately upon my reading it.

Q. Is it your recollection that you forwarded that check the very day you saw in the "Cincinnati Enquirer" that he had been nominated for Governor of the State? A. Within perhaps ten minutes after I read it.

Mr. Hinman.— That is all.

Mr. Stanchfield.— That is all.

(Witness excused.)

Mr. Stanchfield.— For the purpose of the record I desire to call Judge Bell, if the Presiding Judge please, to ask him a question.

The President.— Call him.

The Clerk.— Judge Bell, you do solemnly swear that the evidence which you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer, as Governor of this State, shall be the truth, the whole truth and nothing but the truth, so help you God?

The Witness.— I do.

The Clerk.— What is your full name?

The Witness.— Joseph H. Bell.

JOSEPH H. BELL, a witness called in behalf of the Managers, having been first duly sworn, in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Stanchfield:

Q. Judge Bell, where do you reside? A. In Yonkers, New York.

Q. And you occupy and have for quite some years a judicial place, do you not? A. For about eight years.

Q. You are City Judge of Yonkers? A. Yes.

Q. A lawyer by profession? A. Yes.

Q. Engaged in the practice of your profession? A. Yes.

Q. Are you counsel for the brokerage firm of Fuller & Gray? A. Yes.

Q. What is the first name of Mr. Gray? A. John Boyd Gray is his name.

Q. Will you give me his various business addresses and where is his place of business where one would ordinarily expect to find him to serve a subpoena on him? A. He has the main office —

Mr. Herrick.— How is this material, if it please the court?

Mr. Stanchfield.— If the Presiding Judge please, I want to explain and I ought to explain that John Boyd Gray is the one wit-

ness that can reveal the identity of the owner of account No. 500, and the Board of Managers have been trying for two weeks to subpoena him without avail, and what I want to find out from his counsel is what his addresses are?

Q. Will you give me his business addresses first? A. His main office, or the office of the firm of Fuller & Gray is No. 71 Broadway in the city of New York. He has a branch office or his firm has, in the city of Brooklyn, somewhere I think on Montague street. I am not sure of the number of that.

Q. Is that office carried on under the name of Fuller & Gray? A. Yes, sir. They have further a branch office at 501 Fifth avenue, almost on the corner of 42d street. They have also a branch office in the city of Yonkers.

Q. Has he any other business addresses of which you know? A. None of which I am aware.

Q. In this jurisdiction, in this State? A. None of which I am aware.

Q. Where is his residence? A. Mr. Gray usually or frequently stops with certain relatives of his, an uncle and aunt, I think.

Q. In Yonkers? A. No, in Brooklyn, the address of whom I do not know. He sometimes stays with friends of his on 52d street, New York, the number of the house of which I do not know.

Q. And you are unable, if I understand you then, to give us his residential address? A. I am, Mr. Stanchfield, unable to tell you exactly what his residence is. I do business with him, you understand, I do not live with him.

Q. You were apprised this morning or last night by counsel for the Managers that we have been endeavoring for quite some time to subpoena Mr. Gray, were you not? A. Yes.

Q. And we asked you to communicate with Mr. Gray and ascertain whether he wouldn't come here or permit process to be served upon him, did we not? A. You did.

Q. Did you communicate with Mr. Gray by long distance telephone?

Mr. Hinman.— Objected to on the ground it is incompetent.

The Court.— Overruled.

The Witness.— I did.

Q. Did he tell you whether or no he would come here?

The Witness.— If the Court please, on behalf of my client I plead professional privilege and refuse to answer and submit myself to the instructions of this Court.

Mr. Stanchfield.— I haven't the slightest desire to invade the domain of personal privilege if the Presiding Judge thinks that the request of a man to submit himself to the service of process is a confidential communication.

The President.— He may have consulted him on the question of whether he should submit to the jurisdiction. I doubt whether he should be pressed on that. Do you know where he is, witness?

The Witness.—I do not.

Mr. Stanchfield.— I bow to your Honor's suggestion. I haven't the slightest desire to invade that domain. That is all, Judge.

The Witness.— I would like to make myself plain in this respect, that so far as I as counsel am concerned or any information that I can give or any advice that I can give to aid this Court in arriving at a just conclusion in its great contention is at its disposal on either side and I believe both sides know it.

The President.—To get to the practical point, can you tell us how the Managers can get this witness to attend here? That is the practical point.

The Witness.— I don't want, sir, to be critical of the Managers, but I do know this, that Mr. Gray has been in his office at 501 Fifth avenue, where there are no means or methods of concealment, certainly, up to Saturday noon. I understand from statements that have been made to me that you could not find him there, but I know he has been there because he has called me from there and I know by the return messages I sent him that he was in that office. Anything I can do for the committee or the defense to produce Mr. Gray, and I understand they both want him —

The President.— Will you describe his personal appearance so

a subpoena server may recognize the man? About how old is he?

Mr. Stanchfield.— I will suggest something practical. If you feel free to do it, will you go out and telephone him to submit himself to service of process? You say you want to help us. If you will do that, that will meet the case.

The Witness.—I will do that at this moment, if I am able to find him.

Mr. Stanchfield.— I will accept that solution of it. That is all.

The President.—That is all. Any cross.

Mr. Herrick.— No.

(Witness excused.)

Mr. Todd.— Mr. Adams.

The Clerk.— Mr. Adams, you do solemnly swear that the evidence which you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer as Governor of this State, shall be the truth, the whole truth and nothing but the truth, so help you God?

The Witness.— I do.

The Clerk.— What is your full name?

The Witness.— Henry G. Adams.

HENRY G. ADAMS, a witness called in behalf of the Managers, having been first duly sworn, in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Todd:

Q. You are an employe of the State of New York? A. I am.

Q. In the Secretary of State's office? A. I am.

Q. You are a clerk there? A. Yes.

Q. How long have you been employed in the Secretary of State's office? A. A little over eleven years.

Q. Among other things have you charge of the statements of candidates for office which are filed in that office under the law? A. I have.

Q. Are you familiar with the form of the certificate and affidavit which is sent out by the Secretary for the purpose of candidates filing such certificates? A. I am.

Q. I show you the certificate filed by William Sulzer, which is Managers' Exhibit No. 33, and ask you to examine the form upon which that certificate is made out. Is that the regular form upon which is prescribed by the Secretary of State's office and which has been furnished to candidates?

Mr. Marshall.— We object to that your Honor. The form which is issued by the Secretary of State is of no consequence. The question is what the law requires.

Mr. Todd.— The law requires, if the court please, that the Secretary of State shall prescribe the form and I am trying to show that this is the form prescribed by the Secretary of State.

The President.— Have you got the statute there?

Mr. Todd.— Yes, I can refer your Honor to section 544, I think of the Corrupt Practices Act.

The President.— Just read that part of it, please.

Mr. Todd.— I read Section 549 of the Corrupt Practices Act.

Mr. Brackett.— The Election Law.

Mr. Todd.— The Election Law, the Secretary of State — the form provides, " the Secretary of State shall provide blank forms suitable for the statements above required."

Mr. Marshall.— It merely says he shall provide forms, it does not say he shall prescribe the form. We assume this form may have been printed by the Secretary of State and was issued by him; that we will be perfectly willing to concede, but beyond that we object to the witness giving an opinion as to whether it was the form prescribed by the Secretary of State, or to attempt to give an interpretation of the statute.

Mr. Todd.— If Mr. Marshall does not like the word "prescribed" I will use the word in the statute.

By Mr. Todd:

Q. Is this the form provided by the Secretary of State? A. It is.

By the President:

Q. It is a printed form, isn't it? A. Yes, sir.

Q. You issued and sent it around to all the candidates? A. Yes, sir.

Q. Your office? A. Yes, sir.

By Mr. Todd:

Q. How long has this particular form, exactly like the form upon which Candidate Sulzer made his certificate of expenses, been in use in the Secretary of State's office?

Mr. Marshall.— That is objected to as entirely immaterial.

Mr. Todd.— We desire to show, if the Court please, that this is the form prescribed by the Secretary of State, and the one which was used by candidates under this statute, and which had been used in this State for some time.

Mr. Parker.— It has been from the beginning.

Mr. Herrick.— From the beginning of what?

Mr. Parker.— From the enactment of that section of the Corrupt Practices Act down to that.

The President.— Judge Parker, what is the object, for what purpose is it offered?

Mr. Parker.— It is offered for this purpose first, because it is provided by statute that a form, in accordance with that statute, shall be prepared by the Secretary of State, and it was done. If there is any opportunity for debate about the matter at all, and debate was suggested on the other side at the opening, then there has been placed upon it from the beginning a practical construction of the meaning of this provision of the statute.

The President.— I think so, but I think such practical construction must be that of which the court can take notice rather than be the subject of contradictory evidence. Objection sustained.

Mr. Parker.— Then we understand that the court will take judicial notice?

The President.— If it is the fact.

Mr. Parker.— It would have been rather convenient for us then to have it spread on the record.

The President.— We will do that at a later stage, Judge.

By Mr. Todd:

Q. Have you produced also from the files of the office of the Secretary of State, chapter 475 of the Laws of 1913? A. I have.

Mr. Todd.— I offer this act in evidence, together with the markings on the jacket. It is an act to amend the penal law in relation to false representations concerning securities.

Mr. Fox.— What is the relevancy?

Mr. Todd.— The relevancy of it is it is one of the acts which was introduced in pursuance of the message of Governor Sulzer to the Legislature, urging the passage of certain acts affecting the New York Stock Exchange.

The President.— It is hardly necessary to put in evidence a general statute. The court must take judicial notice of its existence. It can do no harm. It is merely superfluous. You can have it marked, if you wish.

Mr. Todd.— It is our idea that it is necessary for us to show the history of the enactment of these acts in order to make our proof under that article.

The President.— You can call his attention to the circumstances.

Mr. Todd.— It is offered in evidence. Do I understand there is any objection?

Mr. Hinman.— Counsel are looking at it?

The President.— There cannot be any objection.

(Act offered in evidence, received and marked Exhibit M-102.)

Mr. Todd.— We offer in evidence the original bill enacted into chapter 476 of the Laws of the State of New York, with the jacket.

Mr. Hinman.— What is the title?

Mr. Todd.—And the endorsements thereon, showing the history of the act. The act is entitled: "An act to amend the Penal Laws in relation to reporting or publishing fictitious transactions in securities."

(The act offered in evidence was received and marked Exhibit M-103.)

Q. You also produce the original bill enacted into law, Chapter 500, of the Laws of 1913? A. I do.

Mr. Todd.— I introduce it in evidence, together with the jacket and the indorsements thereon, showing the history of the enactment of this law.

Mr. Hinman.— Give the title.

Mr. Todd.— The title is "An Act to amend the penal law in relations to transactions by brokers after insolvency, and in the hypothecation of customers' securities."

(The act offered in evidence was received and marked Exhibit M-104.)

Mr. Todd.— That is all, Mr. Adams.

Here are a few dates I want to read into the record. In order that I may permit the Secretary of State to take back the original documents, I would like to read a few dates into the record, which we consider pertinent.

The President.— Read the entries on what we term the jacket.

Mr. Todd.— Chapter 475 of the Laws of 1913, was introduced by Mr. Stilwell in the Senate, on, the date is not given,

but it was passed by the Senate on March 24, 1913; and it passed the Assembly on April 29, 1913, and it was approved by the Governor on May 9, 1913.

Chapter 476 of the Laws of 1913, was passed by the Senate on March 24, 1913; passed by the Assembly on April 29, 1913; and was approved by the Governor on May 9, 1913.

Chapter 500 of the Laws of 1913 was introduced by Mr. Stilwell in the Senate, and was passed by the Senate on April 1, 1913; passed by the Assembly on April 30, 1913, and was approved on May 14, 1913.

I ask the Clerk of the Senate, or his deputy, should take the Chair.

The Clerk.— Mr. Fay, you do solemnly swear that the evidence which you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer, as Governor of this State, shall be the truth, the whole truth and nothing but the truth, so help you God.

The Witness.— I do.

The Clerk.— What is your full name?

The Witness.— Ernest A. Fay.

ERNEST A. FAY, a witness called in behalf of the Managers, having been first duly sworn, in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Todd:

Q. You have produced the Journal of the Senate for the year 1913? A. A portion of it.

Q. Will you produce the message which was sent by Governor Sulzer to the Legislature on January 27, 1913? A. I haven't the journal.

Mr. Todd.— Is there any question about it, gentlemen?

Mr. Herrick.— No.

Mr. Marshall.— We consent that he may read from the printed copy, with the same force as though the original were produced.

Mr. Todd.— We offer in evidence the message.

(The message offered in evidence was received and marked Exhibit M-105.)

Senator McClelland.— Was this the emergency message?

Mr. Marshall.— No.

Mr. Todd.— I will not tire the Court with the reading of the full message, but simply the effect of it, to acquaint you with the object of the message.

It is dated January 27, 1913, and is addressed to the Legislature, and it is generally in reference to legislation regarding stock exchanges. Among other bills or legislation that is suggested by this message, I will read the following:

> "It has been charged that there has been a practice on the part of some brokers of selling for their own account the same stocks that they have been ordered to buy for their customers contemporaneously with the execution of the orders on behalf of their customers. Such transactions, of course, amount to a virtual bucketing by brokers of the orders of their customers. They come within the same principles that lead to the condemnation of bucket shops. They are obviously unjustifiable and should be stringently forbidden by a clear and explicit statute on the subject."

The next paragraph is headed, "Prohibiting brokers from doing business after their known insolvency," and the section on that subject concludes as follows:

> "I, therefore, recommend an amendment to the law, with with appropriate penalties for its violation, forbidding a broker to receive securities or cash from his customers, excepting in liquidation of, or as security for an existing account, or to make fresh purchases or sales for his own account after he has become insolvent.
>
> "The law should also contain a clear definition of insolvency within the meaning of the act, either analogous to the insolvency provisions of the National Bankruptcy Act, or otherwise, clearly defining such insolvency."

The next paragraph is headed, "More stringent penal provisions affecting bucket shops."

> "Under the law of New York as it is at present, it is necessary to establish that both parties to an ostensible trade in securities intended that it should be settled by the mere payment of differences and not by the actual delivery of property. It follows from this state of the law that the keeper of a bucket shop may escape the penalties now imposed by the laws, merely by proving that his customer was an innocent victim, and a consenting party to the illegal transaction. I believe the penal code should be amended so that it shall be necessary only to show that the bucket shop keeper intended that there should be no actual delivery of property."

The next caption is "False statements," and the section, the last paragraph of the section under that caption reads as follows:

> "I recommend amending the laws of this State so as to make it a criminal offense to issue any statement, or publish any advertisement as to the value of any stock, or any security, or as to the financial condition of any corporation or company issuing, or about to issue, stock or securities where any promise or prediction contained in such statement or advertisement is known to be false or to be not fairly justified by existing conditions."

Q. Have you produced the Senate bills which were introduced by Senator Stilwell, carrying out the suggestions from the message of Governor Sulzer which I have just read? A. I have the printed copies.

Mr. Marshall.—They will show for themselves. Offer them in evidence. If you have them there, offer them.

Mr. Todd.— Very well. We offer in evidence Senate Bill Introductory No. 597, entitled "An Act to amend the penal law in relation to bucketshops." It was introduced by Mr. Stilwell on February 5, 1913. Will counsel consent that I also read the disposition that was made of each of those bills? I have obtained the information from the clerk.

Mr. Marshall.— If it will save time, that is all right. We will take your word for it.

Mr. Todd.—This bill was reported out of the Committee on Codes, and referred to the Committee of the Whole on March 13th; on March 27th, Assembly Bill No. 430 was substituted; Assembly bill went to third reading April 2d, and passed on April 7th, the Assembly bill being identical with this bill. This became a law known as chapter 236 of the Laws of 1913.

I offer that in evidence.

(The bill offered in evidence was received and marked Exhibit M-106.)

Mr. Todd.— I offer in evidence Senate Bill No. 604, introduced by Mr. Stilwell on February 5, 1913, and entitled "An Act to amend the penal law in relation to trading by brokers against customers' orders." This bill died in the Committee on Codes of the Senate.

Mr. Brackett.— It never was reported out of the Committee.

Mr. Marshall.— I think that would be a better way to describe it, as not having been reported by the Committee.

Mr. Todd.— The suggestion is accepted. I withdraw the remark, "it died", and insert in place thereof that it was not reported out of the Committee.

The President.— And that is accepted as a correct statement of its fate?

Mr. Marshall.— That is correct.

Mr. Todd.— I offer in evidence Senate Bill No. 641, introduced by Mr. Stilwell on February 5, 1913, entitled "An act to amend the penal law in relation to the manipulation of prices of securities, and conspiring movements to deceive the public."

This bill was reported by Codes Committee and reported to the Committee of the Whole on March 13; on March 27, Assembly Bill No. 429 was substituted; the Assembly Bill was ordered to third reading, on April 2d, and passed on April 7th, and became Chapter 253 of the Laws of 1913.

The President.— Is the Assembly bill the same?

Mr. Todd.— I assume it was, although it does not so state here.

Mr. Brackett.— Wherever it is substituted, if the Court please, it has to be identical.

The President.— That is what I imagined.

Mr. Brackett.— Always, with the exception simply of the title, that is in the Senate, and in the Assembly the text of the bill is identical.

The President.— Is there any objection to accepting that statement as correct?

Mr. Marshall.— No objection, your Honor.

(The bill offered in evidence was received and marked Exhibit M-108.)

Mr. Todd.— I offer in evidence Senate bill No. 831, reprint No. 1559, introduced by Mr. Stilwell on February 12, 1913, entitled "An act to amend the Penal Law in relation to delivery to customers of memoranda of transactions by brokers." This bill was amended and was then sent to the Committee on Codes and was not reported out of that Committee.

(Admitted and marked Exhibit M-109.)

Mr. Todd.— I offer in evidence Senate bill No. 832, which was introduced on February 12, 1913, by Mr. Stilwell, entitled "An act to amend the Penal Law in relation to discriminations by exchanges or members thereof." This bill was sent to the Committee on Codes and was not reported out of that Committee.

(Admitted and marked Exhibit M-110.)

Mr. Todd.— I offer in evidence Senate bill No. 833, which was introduced in the Senate on February 12, 1913, by Mr. Stilwell entitled "An act to amend the Banking Law in relation to the organization and regulation of exchange corporations." This bill was committed to the Committee on Judiciary and was not reported out of that committee.

(Admitted and marked Exhibit M-111.)

Mr. Todd.— I offer in evidence Senate bill No. 902, reprint No. 1562, introduced on February 17, 1913, by Mr. Stilwell, entitled "An act to amend the General Business Law in relation to the listing of securities for sale on stock exchanges." This bill was committed to the Committee on Judiciary, was amended and was recommitted to the same committee on August 18th and was not reported out of that committee.

(Admitted and marked Exhibit M-112.)

Mr. Todd.— I offer in evidence Senate bill No. 1188, reprint No. 1884, introduced February 27, 1913, by Mr. Stilwell, entitled "An act to amend the Penal Law in relation to listing or trading in securities." This bill was committed to the Committee on Codes, amended on March 27, and referred to the Committee of the Whole. It was not reported out of the Committee of the Whole.

(Admitted and marked Exhibit M-113.)

Mr. Todd.— I offer in evidence Senate bill 199, introduced by Mr. Stilwell on January 15, 1913, entitled "An act to amend the Penal Law constituting chapter 40 of the Consolidated Laws in relation to speculative trading in securities or commodities on credit or margin." This bill was sent to the Committee on Codes and was not reported out of that committee.

(Admitted and marked Exhibit M-114.)

Mr. Todd.— I offer in evidence Senate bill No. 200 introduced on January 15, 1913, by Mr. Stilwell, entitled "An act to amend the Penal Law in reference to fictitious transactions over the Stock Exchange ticker." This bill was sent to the Committee on Codes and was not reported out of that Committee.

(Admitted and marked Exhibit M-115.)

Mr. Todd.— I offer in evidence Senate bill No. 638, introduced on February 5, 1913, by Mr. Stilwell, entitled "An act to amend the General Business Law in relation to interest permitted on advances on collateral security and repealing section 75 of the Banking Law relating thereto." This bill was sent to the Committee on Judiciary and was not reported out of that committee.

(Admitted and marked Exhibit M-116.)

Mr. Todd.— I offer in evidence Senate bill 103 introduced on February 4, 1913, by Mr. Stilwell, entitled "An act to amend the Tax Law in relation to the amount of tax on transfers of stock." This act was intended to increase the tax upon transfers of stock from two cents on $100 to four cents on $100 par value of the stock. This bill was committed to the Committee on Taxation and Retrenchment and was not reported out of that committee.

(Admitted and marked Exhibit M-117.)

Q. Will you produce special messages which were sent to the Legislature by the Governor in reference to this legislation? A. On any particular date?

Q. I want all of the special messages affecting this stock exchange legislation? A. They are all in here.

The President.—All these refer to stock exchanges or to stock transactions?

Mr. Marshall.— Yes, sir, in reference to stock transfers or regulating the business of dealing in stocks.

Mr. Marshall.— If you have complete printed copies of those messages, all right.

Mr. Todd.— Those of which we have no printed copy are short and I will read them right in.

The President.— Very good.

Mr. Todd.— I read the message from the Governor dated Albany, May 2nd, 1913:

"To the Legislature:

"On January 27, 1913, I sent a special message to your Honorable bodies concerning stock exchanges, and at this time I wish again to call your attention to all that I then stated and to repeat the suggestions contained therein. Thereafter with my approval several bills were prepared and introduced at both branches of your honorable body, and to such of those measures that have not yet passed the Legislature I most respectfully and most earnestly ask your favor-

able consideration. Concerning these measures I have sent to the Legislature the emergency messages to speed their enactment, and I am convinced that their passage at this session of the Legislature is greatly to the interest of the public welfare. I indulge the hope that the receipt of these emergency messages would have resulted in the speedy passage of those measures. I now want to impress upon you as emphatically and as earnestly as words can convey that I believe it to be the desire of our citizens that these pending stock exchange measures receive favorable consideration by the Legislature at this session. Signed, William Sulzer."

The message of the Governor read in the Senate on April 30, 1913:

"To the Legislature:

"It appearing to my satisfaction that the public interest requires it, therefore in accordance with the provision of section 15 of Article 3 of the Constitution and by virtue of the authority thereby conferred upon me, I do hereby certify to the necessity of the immediate passage of Senate bill introductory number 1041, printed No. 1884, entitled: 'An act to amend the penal law in relation to listing or trading in securities.' Given under my hand and privy seal of the State at the Capitol at the City of Albany this 30th day of April in the year of our Lord one thousand nine hundred and thirteen. Signed, William Sulzer."

I read another message of the Governor dated April 30, 1913, read in the Senate on that day as follows:

"To the Legislature:

"It appearing to my satisfaction that the public interest requires it, therefore in accordance with the provisions of section 15 of article 3 of the Constitution and by virtue of the authority thereby conferred upon me, I do hereby certify to the necessity of the immediate passage of Senate bill introductory No. 811, printed No. 1562, entitled: 'An act to amend the general business law in relation to the listing of securities for sale on Stock Exchanges.' Given under my hand and

Privy Seal of the State at the Capitol in the City of Albany, this 30th day of April in the year of our Lord one thousand nine hundred and thirteen.

Signed "William Sulzer."

I read another message which was read in the Senate on April 30, 1913, as follows:

"To the Legislature:

"It appearing to my satisfaction that the public interest requires it, therefore in accordance with the provisions of section 15 of article 3 of the Constitution, and by virtue of the authority thereby conferred upon me, I do hereby certify to the necessity of the immediate passage of Assembly bill introductory No. 1113, Printed No. 1192, entitled: 'An act to amend the general business law in relation to the listing of securities for sale on stock exchanges.' Given under my hand and privy seal of the State at the Capitol in the city of Albany this 30th day of April, in the year of our Lord one thousand nine hundred and thirteen."

Signed "William Sulzer."

I read another message which was read in the Senate on April 13, 1913, as follows:

"To the Legislature:

"It appearing to my satisfaction that the public interest requires it, therefore, in accordance with the provisions of section 15 of article 3 of the Constitution, and by virtue of the authority thereby conferred upon me, I do hereby certify to the necessity of the immediate passage of Assembly bill introductory No. 1010, printed No. 1068, entitled: 'An act to amend the banking law in relation to the organization and regulation of exchange corporations.' Given under my hand and privy seal of the State at the Capitol in the city of Albany this 30th day of April, in the year of our Lord, one thousand nine hundred and thirteen.

Signed "William Sulzer."

I read another message that was read in the Senate on April 30, 1913, as follows:

" To the Legislature:

" It appearing to my satisfaction that public necessity requires it, therefore, in accordance with the provisions of section 15, article 3 of the Constitution, and by virtue of the authority thereby conferred upon me, I do hereby certify to the necessity of the immediate passage of Assembly Bill, Introductory No. 823, printed No. 865, 'An Act to amend the Penal Law in relation to the reporting or publishing of fictitious transactions in securities.' Given under my hand and the privy seal of the State at the Capitol, City of Albany, this 30th day of April in the year of our Lord, one thousand nine hundred and thirteen."

I read another message read in the Senate on April 30, 1913:

" To the Legislature:

" It appearing to my satisfaction that the public interest requires it;

"Therefore, In accordance with the provisions of section 15 of article 3 of the Constitution and by virtue of the authority thereby conferred upon me, I do hereby certify to the necessity of the immediate passage of Assembly Bill, Introductory No. 818, printed No. 860, entitled 'An Act in relation to false representations concerning securities.' Given under my hand and the privy seal of the State at the Capitol, in the City of Albany, this 30th day of April, in the year of our Lord, one thousand nine hundred and thirteen."

I read another message, which was read in the Senate on April 30, 1913, as follows:

" To the Legislature:

" It appearing to my satisfaction that the public interest requires it;

" Therefore, In accordance with the provisions of section 15 of article 3 of the Constitution, and by virtue of the au-

thority thereby conferred upon me, I do hereby certify to the necessity of the immediate passage of Assembly Bill, Introductory No. 824, Senate Reprint No. 420, 'An Act to amend the Penal Law, in relation to trading by brokers against customers' orders.' Given under my hand and the privy seal of the State at the Capitol, in the city of Albany, this 30th day of April, in the year of our Lord, one thousand nine hundred and thirteen."

I read another message read in the Senate on April 30, 1913, as follows:

"To the Legislature:

"It appearing to my satisfaction that the public interest requires it:

"Therefore in accordance with the provisions of section 13, article 3 of the Constitution and by virtue of the authority thereby conferred upon me, I do hereby certify to the necessity of the immediate passage of Assembly Bill Introduction No. 817, printed No. 859, 'An Act to amend the penal law in relation to transactions by brokers after insolvency, and in the hypothecation of customers' securities.' Given under my hand and the privy seal of the State at the Capitol in the city of Albany, this 30th day of April, in the year of our Lord, one thousand nine hundred and thirteen."

I read another message which was read in the Senate on April 30, 1913 — with the permission of the Court I will simply read the description of the bill in these different messages, the formal parts of each of these messages being the same, except the enacting clause of the bill.

The President.— Yes.

Mr. Marshall.— We consent that that be done.

Mr. Todd.— My attention was called to the fact that I misstated the term. I should have said the title of the bill and not the enacting clause. I will read the title of the bill.

The message which was read on April 30, 1913, in the Senate, the formal parts being the same as the previous message, is in rela-

tion to the bill entitled "An Act to amend the penal law in relation to delivery to customers of memoranda of transactions by brokers."

Another message, on April 30, 1913, read in the Senate, the formal parts being the same as the other messages and being in reference to an act entitled "An Act to amend the penal law in relation to discrimination by exchanges or the members thereof."

I read another message which was read in the Senate on May 1, 1913, the formal parts being the same as those previously read, and this message urging the immediate passage of Senate Bill Introduction No. 1464, printed No. 2244, entitled "An Act to amend Chapter 62 of the Laws of 1909, entitled 'An act in relation to taxation, constituting Chapter 60 of the Consolidated Laws,' in relation to the tax imposed on transfers of stock, as amended."

That is all, Mr. Clerk.

Mr. Marshall.— No cross examination.

Mr. Todd.— Just a moment.

Mr. Stanchfield.— If the Presiding Judge please, we now propose to introduce evidence under articles 3 and 4 in the articles of impeachment.

Mr. Clerk, will you turn to the so-called concurrent Frawley resolutions?

The Witness.— I have them here.

Mr. Stanchfield.— We introduce them in evidence. There are two of them. Let me give their respective dates. On May 2, 1913, Mr. Frawley offered the first resolution.

We offer that in evidence.

Mr. Brackett.— Read it right into the record, Mr. Stanchfield.

Mr. Stanchfield.— The pith to this resolution is as follows:

> "Resolved that said Committee is authorized to sit after the adjournment of the Legislature, in and outside the City of Albany, and is hereby authorized and empowered to subpoena and force the attendance of witnesses including pub-

lic officers and public employees, and to require the production of books and papers, including any public record or document pertaining to the administration of any state institution or of any state department concerned in the management, regulation, visitation or supervision of the same, to administer oaths, to employ a secretary, counsel, and stenographer, and expert accountant and such other employees as may be necessary for the purpose of the investigation and the actual and necessary expenses of the committee in carrying out the provisions of this resolution, shall be paid from the funds appropriated for the contingent expenses of the legislature by the treasurer on the warrant of the controller upon the certificate of the chairman of the Committee."

I assume there will be no objection to having the stenographer incorporate in the record, Mr. Marshall, the entire resolution.

We consent to that.

Mr. Brackett.— For convenience; that is all.

The resolution reads as follows:

"By Mr. Frawley: Resolved (if the Assembly concur), that a joint committee of the Assembly and the Senate be appointed, of which the chairman of the Senate Finance Committee shall be the chairman, consisting of three members of the Senate other than said chairman, to be appointed by the President of the Senate, and three members of the Assembly, to examine into the methods of financial administration and conduct of all institutions, societies or associations of the State, which are supported either wholly or in part by State moneys, or which report officially to the State into the functions of any or all State departments concerned in the management, supervision or regulation of any of such departments, the methods of making purchases, fixing salaries, awarding contracts for supplies, buildings, repairs and improvements, the sale of manufactured articles, and the conduct generally of the business of all such institutions and departments, for the purpose of reporting to the next

session of the legislature such laws relating thereto as the Committee may deem proper.

"Resolved, That said Committee is authorized to sit after the adjournment of the Legislature in and outside the city of Albany; and is hereby authorized and empowered to subpoena and enforce the attendance of witnesses, including public officers and public employees, and to require the production of books and papers, including any public record or document pertaining to the administration of any State institution or of any State department concerned in the management, regulation, visitation or supervision of the same, to administer oaths, to employ a secretary, counsel and stenographer, an expert accountant and such other employees as may be necessary for the purpose of the investigation and the actual and necessary expenses of the Committee in carrying out the provisions of this resolution, shall be paid from the funds appropriated for the contingent expenses of the Legislature by the treasurer on the warrant of the controller upon the certificate of the chairman of the Committee."

"Adopted.

"In Assembly. To Ways and Means Com.

"May. 3. Reported and adopted."

Mr. Stanchfield.—The supplementary resolution which we now proffer in evidence is as follows:

"Whereas, It has been alleged, in the press of the State, that unlawful or improper — "

Mr. Marshall.— Have you got the date?

Mr. Brackett.—That will be given by the clerk.

Mr. Stanchfield.— June 25, 1913.

Mr. Marshall.—At the extraordinary session.

Mr. Thompson offered the following:

"Whereas, It has been alleged in the press of the State that unlawful or improper methods have been used or pursued by private persons or public officers and wrongful or

unlawful acts done to influence the votes of legislators on election or primary legislation, and

"Whereas, There has been submitted to the present extraordinary session of the legislature of the State of New York a proposed act providing among other things for the punishment of any person who while a candidate for elective office to be voted for by the electors of the whole State shall fail to make true returns of moneys or things of value, directly or indirectly received, or expended in aid of such candidacy, or who shall receive or expend more than a certain sum stated in said act, now, therefore be it

"Resolved, If the Assembly concur, that for the information of the legislature, the whole subject of any unlawful or improper methods or wrongful or unlawful acts aforesaid, and of receipts and expenditures of candidates for an elective office to be filed by the votes of the electors of the whole State, be referred to a certain joint legislative committee of the Senate and Assembly, to examine into the methods of financial administration and conduct of all institutions, societies or associations of the State, etc., heretofore appointed under joint resolution, dated the 2d day of May, 1913, to ascertain and report to the Legislature at this extraordinary session or, if not ready, as soon thereafter as possible, whether any unlawful or improper methods have been employed, used or pursued or wrongful or unlawful acts done by any private person or public officer to influence the votes of legislators on election or primary legislation at the last regular or present extraordinary session of the Legislature; and further to investigate into, ascertain and report upon all expenditures made by any candidate voted for at the last preceding election by the electors of the whole State, and upon all statements filed by or on behalf of any such candidate for moneys or things of value received or paid out in aid of his election, and their compliance with the present requirements of law relating thereto.

"Said committee to have the power to subpoena witnesses on these subjects, the same as provided in the resolution of May 2nd above referred to."

Mr. Marshall.— Let it appear in in the minutes that this was adopted at the extraordinary session, the date of its passage being given in the minutes.

Mr. Stanchfield.— Surely.

May we have the concession from the counsel for the respondent that similar resolutions were introduced, passed and adopted by the Assembly in due form.

Mr. Hinman.— Same.

Mr. Stanchfield.— I said similar, the same resolution.

Mr. Herrick.— If you say they were, we will.

Mr. Stanchfield.— That is my information. I am not making assertions about it, and they will be incorporated in the minutes.

The President.—And that was passed at the same session as this?

Mr. Stanchfield.— Yes, sir, in the Assembly.

Mr. Marshall.— We consent to that fact, and if it is found to be a fact, reference may be inserted in the minutes referring to the Assembly resolution.

The President.— If you find you are in error, the court will give you leave to withdraw your concession if there should prove to be a mistake.

Mr. Marshall.— That is not necessary, because the resolution, if it is the same as the Senate resolution need not be inserted.

Mr. Brackett.— It is the same resolution, concurrent resolution.

The President.— Your opponents are willing to admit that, only reserving the privilege of withdrawing them if they find there is an error.

Mr. Marshall.— There is no other. This was passed by both houses.

The President.— He suggests that this be not printed twice. I think we have got at this.

Mr. Brackett.— There isn't but one print. That is what I wanted to say.

Mr. Stanchfield.— Read into the record, so we may have it at this time, the personnel of that Committee.

The Clerk.— James Frawley, Chairman; Felix J. Sanner, Samuel J. Ramsperger, Elon R. Brown, La Verne P. Butts, Wilson R. Yard and Myron Smith.

The President.— That is the Senators, or Senators and Assemblymen both?

The Witness.— That is the joint committee, both.

Mr. Stanchfield.— Would you desire, sir, to have them separate?

The President.— No, it is only to have him name the Assemblymen.

Mr. Stanchfield.— Would the presiding judge, owing to the immediacy of a witness who is here, and desires to leave, permit me to interrupt this proof and call him?

The President.— Certainly.

Mr. Stanchfield.— That is all, Mr. Clerk.

(Witness excused.)

The Clerk.— You do solemnly swear that the evidence which you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer, as Governor of this State, shall be the truth, the whole truth and nothing but the truth, so help you God.

The Witness.— I do.

The Clerk.— What is your full name?

The Witness.— Frank M. Patterson.

FRANK M. PATTERSON, a witness produced in behalf of the Managers, having been first duly sworn in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Kresel:

Q. Are you an attorney and counsellor at law? A. I am.

Q. And you are practicing your profession and have an office in the city of New York? A. I am.

Q. How long have you known Governor Sulzer? A. A great many years.

Q. You are a personal friend of his? A. Yes.

Q. And were so at the time he was a candidate for Governor? A. Yes, sir.

Q. Before the 10th of October, 1912, did you have a talk with Mr. Sulzer, who was then a candidate? A. I did.

Q. Where did you have the talk with him? A. I think my first talk was on the street in front of the building in which my office is or was at that time, the Lords Court building, on Exchange Place.

Q. Will you state, please, what that conversation was? A. Well, I had not personally seen Mr. Sulzer at the convention, although I had been there.

Q. You mean at the Democratic State Convention, at which he was nominated? A. At Rochester, and this was shortly after that convention —

Mr. Marshall.— Syracuse.

The Witness.— At Syracuse, and we stopped and talked. I congratulated him on his nomination, and told him that in spite of the fact that I was very much interested in the renomination of Governor Dix, that now that he was the party candidate, that he would have my loyal support. That was the substance of the conversation, and I think in the course of it I told the Governor that in order to convince him that my support would be loyal, and that I was very much interested in his campaign, that I would give a personal contribution in addition to those which I gave to the regular committees, as was my custom.

Q. Did you tell him at that time about how much you would

give him? A. I forget whether I told him then that it was $500. I do not remember that, but I know the contribution was $500. He did not suggest the amount or say anything about it, except that he thanked me for my assurances.

Q. Did you then tell him when you would give him the check or money? A. No. I think at the time I told him at my convenience, that I was very busy, and that I probably would see him in the course of the week and give him this contribution.

Q. On the 10th of October, 1912, did you go to Mr. Sulzer's office? A. I did.

Q. And did you there give him anything? A. I did.

Q. What did you give him? A. I gave him the sum of $500 in cash.

Q. What did you say to him? A. Well, I can't remember exactly the conversation, except that we discussed the campaign. I told him that I was very much interested in the National campaign, in the election of Mr. Wilson as President. I thought he had a very good chance of being elected, provided all the different State organizations got in and gave him their loyal support, and that an extra good campaign by Mr. Sulzer, in addition to electing him Governor, would go a great way toward assuring the election of the President, and I think at that time I handed him this money.

Q. $500 in cash? A. $500 in cash.

Q. Had you drawn that from your bank on that day? A. Yes, it was on the day that I drew the money that I gave it to him.

Q. And is this check I now hand you the check by which you drew the money? A. That is the check.

Mr. Kresel.—I offer that in evidence.

(The check offered in evidence was received in evidence and marked Exhibit M-118.)

Q. The check is dated October 10, 1912, and is drawn on the Mutual Alliance Trust Company.

"Pay to the order of Cash $500.

"Frank M. Patterson."

Q. Mr. Patterson, who suggested that this contribution be made in cash? A. That I cannot at the present time remember. I have been trying to charge my memory on the way up, but that particular feature of the transaction is for the moment lost. I have reason to believe, however, that it was my own suggestion, whether for convenience or not at that time I do not remember, but I do not remember Mr. Sulzer suggesting it. Therefore, I assume that it was of my own motion.

Q. Aside from Mr. Sulzer's thanking you in person, did you receive any acknowledgment of this contribution? A. None whatever, because I gave it to him personally at his office.

Mr. Kresel.— That is all.

Mr. Herrick.— Is that all?

Mr. Kresel.— Certainly.

The President.— Any cross examination?

Mr. Herrick.— Yes.

Cross examination by Mr. Herrick:

Q. You say you have known Mr. Sulzer for a good many years, Mr. Patterson? A. Yes, sir.

Q. Personally and by reputation? A. Yes, sir.

Q. You were conversant with his reputed financial condition? A. Yes.

Q. When you gave him this money, did you place any limits or restrictions upon its use? A. None whatever.

Q. You differentiated apparently in your testimony between the contributions that you made to political committees and this contribution to Mr. Sulzer? A. Yes, sir.

Q. The one you regarded as a personal contribution? A. Yes, sir.

Q. And the other as a political contribution? A. Exactly.

Q. One, helping along a cause and a principle? A. Exactly.

Q. And the other to help along the person, the individual. A. Well yes; to help him personally, to do what he pleased with it.

Q. To do what he pleased with it? A. Yes, sir.

By Mr. Kresel:

Q. Would you have made this contribution to Mr. Sulzer if he had not been the candidate of the Democratic Party for Governor?

Mr. Herrick.— I object.

A. I don't know what I would have done.

Mr. Kresel.— I asked you that question. A. My mind has never operated on it. I would not want to say.

The President.— You could answer this, Mr. Witness: Was the way you came to give him that money because he was the candidate for Governor? A. I rather think that was so, that I would not have had occasion to give him the money other than the fact that he was a candidate for Governor.

The President.— You never offered him any money before?

The Witness.—Never.

Mr. Kresel.— That is all.

By Mr. Herrick.

Q. Would you have given him this contribution except from what you understood his financial needs, his financial condition? A. I think that influenced me a great deal in the offer, the fact that I understood he was not a man of great means but had nothing but his salary in Congress, and it occurred to me that he would have expenses in the course of being a candidate for Governor that might necessitate the use of money that he did not have. I think that influenced me to some large degree.

Q. There are other personal friends of yours that have been candidates for Governor? A. Yes, sir.

Q. Who are not reputed to be in such desperate financial condition as Sulzer?

Mr. Kresel.— I object to that.

The President.— Are you going to follow that up?

Mr. Herrick.— I simply want to know whether he contributed to them that is all.

Mr. Kresel.— I object to that.

The President.— Objection sustained.

Mr. Kresel.— That is all, Mr. Patterson. Thank you.

Mr. Stanchfield.— Will the representative of the Civil Service Commission take the stand?

The Clerk.— Mr. Birdseye, you do solemnly swear that the evidence which you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer, as Governor of this State, shall be the truth, the whole truth and nothing but the truth, so help you God?

The Witness.— I do.

The Clerk.— What is your full name?

The Witness.— John C. Birdseye.

JOHN C. BIRDSEYE, a witness called in behalf of the Managers, having been first duly sworn, in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Stanchfield:

Q. Mr. Birdseye, what is your position? A. Secretary of the Civil Service Commission of the State of New York.

Q. On or about the 21st of July, 1913, did you receive a communication from Mr. Platt, the Secretary of the Governor? A. Yes, sir, I received it on behalf of the Civil Service Commission.

Mr. Stanchfield.— I offer that in evidence.

Mr. Herrick.— May we see it?

Mr. Stanchfield.— Yes, I have the original. I am going to mark a copy, as part of their files.

Mr. Fox.— Is it the appointment of Sarecky?

Mr. Stanchfield.— Yes. His resignation. I will read the whole thing, if you want.

Mr. Herrick.— What is it?

Mr. Stanchfield.— A series of communications back and forth.

Mr. Herrick.— We object to their materiality.

The President.— What is it?

Mr. Stanchfield.— Does the Presiding Judge desire me to explain the position of the Board of Managers with respect to this testimony?

The President.— Yes.

Mr. Stanchfield.— Article 3 of the charges provides "that the respondent, William Sulzer, then being the Governor of the State of New York, unmindful of the duties of his office, and in violation of his oath of office, was guilty of mal and corrupt conduct in his office as such Governor of the State, and was guilty of bribing witnesses, and of a violation of section 2440 of the Penal Law of said State, in that, while a certain committee of the legislature of the State of New York named by a concurrent resolution of said legislature to investigate into, ascertain, and report at an extraordinary session of the legislature then in session, upon all expenditures made by any candidate voted for at the last preceding election by the electors of the whole State, and upon all statements filed by and on behalf of any such candidate for moneys or things of value received or paid out in aid of his election, and their compliance with the present requirements of law relative thereto — while such committee was conducting such investigation, and had full authority in the premises he, the said William Sulzer, in the months of July and August, 1913, fraudulently induced one Louis A. Sarecky, one Frederick L. Colwell, and one Melville B. Fuller, each, to withhold true testimony from said committee, which testimony it was the duty of said several persons named to give to said committee when called before it, and which, under said inducements of said William Sulzer, they and each of them refused to do.

"That, in so inducing such witnesses to withhold such true testimony from said committee, the said William Sulzer acted wrongfully and wilfully and corruptly, and was guilty of a violation of the statutes of the State and of a felony, to the great scandal and reproach of the said Governor of the State of New York."

The President.— Were any of those persons connected with the Civil Service?

Mr. Stanchfield.— I will get at that in a moment.

No. 4 is to the same general effect, except the accusation there is that he was guilty of suppressing evidence of a violation of section 814.

Now, the facts the Managers propose to prove are these: In the State Hospital Commission, at or about this time, were employed three physicians, whose function was to look after the deportation of the alien insane. About this time the Civil Service Commission was apprised by the Governor of the State that the said Louis A. Sarecky, named in the charge, had resigned his position in connection with the Governor as private stenographer. Thereupon followed a series of letters back and forth between the State Hospital Commission and the Civil Service Commission, in which the Civil Service Commission was asked to let down the bars and exempt from examination, competitive or otherwise, Louis A. Sarecky, upon the ground of his extraordinary fitness for the place of Deportation Agent, occupied before by a man of medicine. This man of medicine was transferred to another department, and the extraordinary qualifications lodged in Mr. Louis A. Sarecky, according to this correspondence, were to the general effect that he was a master of five different languages and of the jargon of all nationalities.

Now, the Civil Service Commission, as this correspondence shows, did exempt him from examination, they did set aside the rule, and the setting aside of that rule was approved by the respondent, as Governor of the State, and Mr. Sarecky who had been receiving a salary of between $1,500 and $2,500 a year thereby became propelled into a position that paid him $4,000 a year.

Sarecky about this time was a witness before the Frawley Committee and he refused to testify and give evidence. We charge here that upon those facts, within the four corners of these charges the respondent was guilty of the offenses the Board of Managers lay at his door. I am not going into the details

of that testimony, if the Presiding Judge, please. I have stated in a substantial way just what this proof will show.

The President.— Wouldn't it be better to wait until you have got the conduct of Sarecky in evidence?

Mr. Stanchfield.— I am willing to adopt any method.

The President.— It seems to me that is better, because it is difficult for the Court to tell now whether this evidence will or will not be competent.

Mr. Stanchfield.— Now, I propose to read here, if the Presiding Judge please, from the proceedings that took place before the Joint Legislative Investigating Committee when Mr. Sarecky was before it as a witness.

Mr. Herrick.—That we object to as incompetent.

Mr. Stanchfield.— Let me inquire is the objection made upon the ground that this is not the best evidence?

Mr. Herrick.—The objection is made upon the ground it is not the best evidence and our information is that this record of the evidence is not correct. Now, whether that particular one is or not I don't know.

Mr. Stanchfield.—That does not go to anything except the form in which the offer is made. That simply necessitates the calling of the stenographer in order to demonstrate whether or no this be accurate. I would say in the interest of the saving of time that we will go through it later and if there are any errors in this evidence I would be only too glad to correct them.

Mr. Herrick.—The respondent is not bound by what took place before that committee.

The President.—No, but how can they establish this charge, assuming they can establish it, except by proving that Sarecky did not appear, and then connecting that to show that the respondent advised him to appear.

Mr. Herrick.— Exactly, but what we submit is they cannot prove it by the minutes of the proceedings in which they claim he refused. That is their theory of the evidence.

The President.— Your opponent concedes that. That is only as to the method or the character of the evidence.

Mr. Herrick.— We want other evidence than that.

The President.— Then you will have to obtain other evidence.

Mr. Stanchfield.— May I inquire of the official stenographer whether he took the minutes of the Frawley Investigating Committee.

(One of the stenographers stated that he had taken part of the minutes and was directed to bring his notes to the court room tomorrow morning at 10 o'clock.)

Mr. Stanchfield.— It is now five minutes of 5, your Honor.

Mr. Kresel.— I think I can fill up five minutes, if the court please. I want to know whether it will be conceded by the counsel for the respondent that Exhibits 97 and 98, which are the cards produced by Mr. Fuller, are in the handwriting of Mr. Sulzer.

Mr. Marshall.— There is no question about the cards.

Mr. Fox.— They are in evidence.

Mr. Marshall.— We make no objection to the cards or to their probative force. We say we do not raise any question as to the probative force of the evidence.

The President.— Do you concede that at least presumptively they are in his handwriting?

Mr. Marshall.— I do not know anything about that. We make no statement as to the handwriting, but we state that he authorized them or that he is bound by those cards.

The President.— Is that enough for you?

Mr. Kresel.— No, your Honor, but if they won't concede it I cannot make them do it.

The President.— Then you will have to get the witness. You can do that.

Senator Thompson.— Mr. President, I want to make a request of the Presiding Judge, to rule that the Committee provided by

Rule 9 remove these typewritten statements of the testimony from the desks and that they be not kept or provided any further. In other words, we have the printed testimony each morning and the typewritten testimony I think is a nuisance on the desks.

The President.— Senator Murtaugh, will you please attend to the matter and see that the convenience of the Senators and other members of the court is subserved. Adjourn court.

The Crier.— Hear ye, hear ye, hear ye, all persons having any further business before this Court of Impeachment held in and for the State of New York may depart hence and appear here to-morrow, Wednesday, October 1, 1913, at 10 o'clock, to which time this Court now stands adjourned.

Whereupon at 5 P. M. the Court adjourned to meet again on Wednesday, October 1, 1913, at 10 o'clock, A. M.

SENATE CHAMBER,

ALBANY, N. Y., *October* 1, 1913.

Pursuant to adjournment the Court convened at 10 a. m.

PRESENT:

Hon. EDGAR M. CULLEN, Presiding Judge,
and
THE JUDGES OF THE COURT OF APPEALS,
and
THE SENATORS OF THE STATE OF NEW YORK.

APPEARANCES:

THE MANAGERS:

Same as heretofore.

Counsel for the Managers:

Same as heretofore.

Counsel for the Respondent:

Same as heretofore.

The President.— Call the roll, Clerk.

The Clerk thereupon called the roll and found a quorum to be present with the following absentees:

Senator Fitzgerald.
Judge Gray.

The President.— Crier, open Court.

The Crier.— Hear ye, hear ye, hear ye, all persons having any business before this Court of Impeachment, held in and for the State of New York, may now draw near, give their attendance and they will be heard.

Mr. Hinman.— If the Court please, I am informed this morning by Mr. Fuller, who was a witness yesterday, that he would like to make a statement to the Court. Mr. Fuller, if you will take the stand.

Melville B. Fuller resumes the stand.

The Witness.— If it please the Court, I wish to make a personal statement referring to the testimony given by me at this Honorable Court yesterday. There appeared in one of yesterday evening papers in large bold type, front page headlines, the following: "Tells Court stock-book entries have been juggled." In another: "Say brokers doctored books to hide Sulzer's speculations." In another: "Sulzer account was falsified to shield him, say accusers." In still another: "$180,000 Sulzer loans in Wall street 'books' doctored, new charge." I now present these newspapers for the inspection of the Court.

The President.—You may leave them there.

The Witness.— Now, if these statements were true it means absolute ruin to me and my associates in business as well. I think this Court will bear me out in the statement that I have not deserved such treatment. I have not had and I have no interest in these impeachment proceedings except as a citizen and to tell the truth as a witness without reserve. I point to the record of my testimony as proof of that fact. I have been in attendance here for days with all my books and my papers at great inconvenience to myself and injury to my business. I have concealed nothing and I have nothing to conceal. I stated the facts frankly to the Frawley Committee. I appeared several times before Messrs. Kresel and Levy, although I understood that they had no legal right —

The President.— Just omit that.

Mr. Stanchfield.— Just a moment; that is not a personal statement. Speaking for the Board of Managers, I have not any desire to curtail the right of Mr. Fuller to make any statement that he pleases with reference to sensational or erroneous headlines in the New York newspapers, but beyond that I cannot permit him to go.

The President.— Avoid any reference to other matters except what transpired in this Court.

Mr. Marshall.— I understand the witness is merely indicating

his good faith and his entire willingness to testify under all circumstances.

Mr. Stanchfield.— The willingness of Mr. Fuller to testify, or his good faith, is not challenged by the Board of Managers.

Mr. Marshall.— I understand the witness complains that there has been misrepresentation as to what he said.

Mr. Stanchfield.— I am perfectly willing to say, and I trust the newspaper men in attendance will take the statement, that the Board of Managers in no way, at no time, and at no place, have ever desired to asperse or blacken the business reputation, standing or credit of this brokerage firm of Harris & Fuller. We are not a party to any such.

Mr. Marshall.— I suppose the witness can take care of himself.

The Witness.— I brought all my books and papers to Albany —

Mr. Stanchfield.— I submit, if your Honor please, he would have to do that as any other citizen would.

The President.— Mr. Witness, of course, if any newspaper, or anybody else, has aspersed you, they are liable in a suit for libel. The fact that it is in a judicial proceeding won't protect them. The truth of a situation does not justify comments on it, if they are unjustly founded on the evidence given. Further, it is a contempt of Court to publish false and inaccurate statements of what transpire in Court.

So that your attorney, or yourself, can apply to the Court, if you deem it wise to proceed against the paper.

This is hardly the regular proceeding you are adopting now. The Court is always appreciative, in its experience here not alone, of the difficulties under which a witness labors. He is bound to give up his time, often at great loss, always at annoyance, and subject to the criticism as to the testimony he has given; therefore, the presiding judge has given you the privilege to make the statement and repudiate the suggestion that it was false. You have done that.

The Witness.—I have not covered the points brought out by Mr. Kresel yesterday, sir.

The President.— That you could hardly argue with the counsel.

The Witness.— Can't I explain then?

Mr. Stanchfield.— I submit —

The President.— I think it is not wise.

Mr. Marshall.— May I be permitted to make this suggestion. I understand the witness claims not only did the newspaper headlines misrepresents the case, but innuendoes and insinuations were made by counsel for the Managers during the examination, which the witness at the time thought had been thoroughly explained, and which he desires now to make clear. That is what I understand he wishes to say.

The President.— If he has any qualifications to make as to the testimony he has previously given, he has the right to do it. I think unless it is testimony of that kind it is not wise to proceed further in that direction. The Court gave him, however, the privilege of calling attention to that assertion in the newspapers against him and his right to repudiate it.

Mr. Herrick.— I have never seen that paper. I don't know what the witness proposes to say or has written down, but, in justice to him, will you look over the paper and see if there is anything in the nature of it which he has the right to read. It will take but a moment.

Mr. Stanchfield.— That question ought to be self-answering. Mr. Marshall's contention is a witness has a right in a court of justice where the rules of the Supreme Court for the introduction of evidence obtain, and where the conduct of a trial is within the rules of the Supreme Court that a witness has a right in a statement to criticise the conduct of counsel in the case. That is a very novel proceeding.

Mr. Marshall.— I had no such meaning.

The President.— I think it is wise, unless there is some explanation, that it should end. You may explain or qualify any answer you made, but beyond that you cannot go. You cannot make a statement in justification of your conduct.

The Witness. — I would like to state that my books are absolutely correct. That no balances have been forced. There has been nothing omitted there or concealed to protect Sulzer or anyone else. I am perfectly willing to bring my books to this Court, to bring every clerk in my office, if they wish to prove that statement.

The President.— I think that is sufficient. Now call your next witness.

Mr. Stanchfield.— I call Mr. Frank.

The Clerk.—You do solemnly swear that the evidence which you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer, as Governor of this State, shall be the truth, the whole truth and nothing but the truth, so help you God.

The Witness.— I do.

The Clerk.— What is your full name?

The Witness.— Samuel M. Frank.

Mr. Hinman.— If I may be permitted, I inquired the day before yesterday regarding an admission concerning the testimony of Mr. Brady. Will that admission be made?

Mr. Kresel.— I will look at it now. I will let you know in a few minutes.

Mr. Hinman.— If not, we want Mr. Brady recalled for further cross-examination.

Samuel M. Frank, a witness called in behalf of the Managers, having been first duly sworn, in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Stanchfield:

Q. Mr. Frank, what is your occupation? A. Stenographer.

Q. And were you one of the staff of stenographers employed in the taking of testimony that was adduced from time to time during the past summer? A. Yes, sir.

Q. Before the so-called Frawley Committee? A. I was.

Q. Were you in attendance as a stenographer before the session of the Frawley Committee that took place on or about the 30th of July, 1913? A. Yes, sir.

Q. Where was that session of the Committee held? A. In the Senate Chamber.

Q. City of Albany? A. Yes, sir.

Q. Have you with you or before you the original stenographic notes of the testimony that you took at that session? A. I have.

Q. Have you likewise the volume or transcript of typewritten notes which were translated? A. I believe that is on your counsel table.

Mr. Stanchfield.— You may mark the stenographic notes for identification.

The notes offered were marked Exhibit M-120 for identification.

Q. Have you now before you the typewritten translation of the stenographic notes of the testimony given or adduced at that hearing? A. I have.

Mr. Stanchfield.— I will have that marked Exhibit 121 for identification.

Typewritten translation was marked Exhibit M-121 for identification, commencing at page 540.

Q. Do you, Mr. Frank, know one Lewis A. Sarecky, a sometime stenographer to respondent, Governor Sulzer? A. I only saw him as a witness before the Frawley Committee at this hearing I referred to.

Q. You know him by sight? A. Oh, yes.

The President.— You know he was the witness you saw there?

The Witness.— Yes.

Q. Did Lewis A. Sarecky appear before the Frawley Committee? A. He did.

Q. Was that while you were acting as official stenographer to that committee? A. It was.

Q. Was an oath administered to him? A. It was.

Q. By whom? A. By the Chairman of the Committee.

Q. And after the administration of that oath by the Chairman of the Committee did he give certain testimony by question and answer? A. He did.

Q. You have before you the typewritten testimony? A. Yes.

Mr. Stanchfield.— Is the objection to be raised that he must use his stenographic notes?

Mr. Herrick.— No.

Mr. Stanchfield.—Then you may read right from the typewritten.

Mr. Herrick.— That is objected to as incompetent and immaterial.

The President.— Get to the point.

Mr. Stanchfield.— If Judge Herrick will explain what he means by using the word "Incompetent" I will know perfectly well how to proceed. I ask in one breath whether he means to raise the question that it is not the best evidence and he says no; then he makes the objection that it is incompetent, and that is not the best evidence.

The President.— The Court rules against him on that because of his previous admission.

Mr. Herrick.— I thought it was incompetent and I said it was incompetent and immaterial. There ought to be some foundation laid, some connection of Louis A. Sarecky with the Governor before this testimony is taken.

Senator Healy.— We don't hear a word the attorney says.

Mr. Herrick.— He has overruled me, so it is not of much consequence.

Q. Was this question put to Mr. Sarecky: "Where do you live?" A. It was.

The President.—Any objection to this introductory matter?

Mr. Herrick.— No.

The President.— It simply goes to identify it first.

Mr. Herrick.— The Court having overruled our objection, he needn't spend any time, but can read right along.

Q. "Mr. Sarecky, where do you live? A. 516 Monroe street, Brooklyn."

Q. You follow me and see whether what I read is a correct transcript of the typewritten minutes, and if it is not, stop me:

"Q. Mr. Sarecky, where do you live? A. 516 Monroe street, Brooklyn.

"Q. And are you connected with some of the departments of the State Government? A. I am.

"Q. What one and in what capacity? A. At present I am connected with the State Hospital Commission as deportation agent for the State of New York of the alien insane.

"Q. And has your salary been fixed yet? A. That I don't know. I think it is $4,000 a year, but I cannot say definitely.

"Q. That is the understanding, that you expect to have $4,000 a year? A. So I have been informed.

"Q. Who informed you to that effect? A. The Secretary to the State Hospital Commission.

"Q. Did you have any talk with Governor Sulzer about that? A. I asked him for the place.

"Q. Yes, and did he say anything about what the salary would be? A. No, he said nothing; it never came up.

"Q. You did not bother about that? A. No, sir.

"Q. How old are you, Mr. Sarecky? A. Twenty-seventh year.

"Q. Twenty-seventh year? A. That is, I am going on twenty-eight.

"Q. And what is your profession? Have you any profession in particular, or have you some general occupation? A. Well, I am a graduate of a law school; I have been acting as Secretary; I have been connected with various businesses.

"Q. You have been connected with Governor Sulzer for some years, have you not? A. Since December, 1902.

"Q. And in what capacity have you acted for Governor Sulzer? A. Well, I was an assistant around the office and finally in a sort of confidential secretaryship."

Mr. Hinman.— Pardon me, if your Honor please, let us raise the question and the objection that this is incompetent and hearsay as against this respondent.

Mr. Stanchfield.— Will you let me state for a moment my contention?

The President.— Yes.

Mr. Stanchfield.— The accusation, if the Presiding Judge please, in article 4, is bribery, and in article 5 of the suppression of testimony. Our contention is that Governor Sulzer, when he approved the selection of Sarecky as one of the Deportation Agents of the Alien Insane, knew the manifest palpable unfitness for Sarecky to occupy that position. This testimony shows the acquaintance, the intimate acquaintance from boyhood to manhood of Governor Sulzer with Louis Sarecky; and it shows a request by Sarecky for designation and appointment to this place; and if I am permitted to read the record will further disclose the difference between the salary as confidential secretary that he was in receipt of before the appointment to the Deportation Commission and the salary of $4,000 a year thereafter attached to this place. It presents, as the Managers contend, the strongest possible circumstantial evidence of bribery. Now, in using the word "bribery" I am using it advisedly. The word "bribery" does not necessitate that there should pass between the briber and the bribed something so tangible that one may take it in his hand or put it in his pocket or that it should be susceptible to human touch. It may be much more invidious than anything of that kind would imply. In other words, a bribe is a reward bestowed for the purpose of

perverting judgment. A bribe is bestowed for the purpose of corrupting conduct —

The President.— Well, but —

Mr. Stanchfield (continuing).— And when it appears that this witness, just as he was subpoenaed before the Frawley Investigating Committee asked this advanced position, for which he was hopelessly unfitted and incompetent, at the hands of this respondent, and that position was conferred upon him, with his tremendous increase, doubling, if you will, the salary, I have a right to submit, as matter of fact, to this tribunal that are triers of fact as well as judges of law, whether or no that does not establish the improper use of patronage to shade and color the conduct and the attitude that this man took before the Frawley Committee.

The President.— That is not the question that is before the Court.

Mr. Stanchfield.— The question —

The President.— One moment, counselor. The facts may be all competent. The question is, is the testimony of Sarecky competent evidence of these facts or hearsay? That is the point. On the question of whether Sarecky refused to be sworn, of course what he did there is necessarily, that is the very thing, and that you can show; but as to these other declarations of Sarecky, they are hearsay.

Judge Werner.— Mr. President —

The President.— Yes, Judge Werner.

Judge Werner.— May I ask a question, in the interest of saving time, perhaps? I would like to ask if Mr. Sarecky is to be produced as a witness.

Mr. Hinman.— If your Honor please, I understand —

Judge Werner.— This question may very properly arise when he is on the stand.

The President.— Yes.

Mr. Hinman.— If I may be permitted to answer the question, I understand he is under subpoena by the Board of Managers, and has been for several days.

Mr. Stanchfield.— You must not take it from that that the Board of Managers intend to call him and make him their witness.

Mr. Herrick.— I didn't understand they would.

The President.— It will be excluded. The objection is sustained.

Mr. Stanchfield.— Now, I will not transgress the Presiding Judge's ruling. (Reading.)

> "Q. When were you served with your subpoena to appear here before this committee? A. July 23rd."

Now, under your ruling it would be — I will ask for information — under your ruling, would your Honor hold that it would be improper for me to read testimony that took place, as to what took place between Sarecky and the Governor after the subpoena was served?

The President.— Yes. That would be excluded. Not on the ground the fact is not competent, but on the ground that Sarecky's declarations in another proceeding are not evidence here.

Mr. Stanchfield (reading).— "Q. Did you discuss with Mr. Hennessy your refusal to answer the subpoena? A. I did.

Mr. Marshall.— One minute.

Mr. Hinman.— That is the same thing.

Mr. Fox.— Are not his conversations or declarations to Mr. Hennessy equally hearsay? I understood your Honor to confine this testimony to the blunt fact of the alleged refusal to testify.

The President.— Well, all the declarations accompanying his refusal.

Mr. Stanchfield.— Certainly.

The President.— But not the declarations that took place be-

tween him and others. It is what took place on that occasion relative to what he said he would do or would not do.

Mr. Herrick.— Of course.

Mr. Stanchfield.— I am keeping within your Honor's ruling. (Reading): "Q. Did you discuss with Mr. Hennessy your refusal to answer the subpoena?"

Mr. Fox.— We object to that.

The President.— I don't know who Mr. Hennessy is, but how could it do any harm?

Mr. Fox.— We suspect that Mr. Stanchfield's motives are innocent.

The President.— Proceed, Mr. Stanchfield.

Mr. Stanchfield (reading): "Q. Did Mr. Hennessy advise you not to answer the subpoena? A. He concurred in the opinion rendered by Mr. Marshall."

Mr. Herrick.— I ask to have that stricken out.

The President.— Strike it out. That is not competent.

Mr. Stanchfield (reading) "Q. Was Mr. Marshall the attorney that advised you?"

Mr. Herrick.— That is objected to as incompetent and immaterial.

The President.— Objection sustained.

Mr. Stanchfield (reading).—"Q. Where is Mr. Marshall's office?"

Mr. Herrick.— That is objected to.

The President.— Sustained.

Mr. Stanchfield (reading).—"Q. Did you see him in Albany or New York?

Mr. Herrick.— The same objection.

The President.— Sustained.

Mr. Stanchfield.— I am getting now technically to the refusal to answer, and I think the answer to that question, if your Honor please, is proper.

The President.— I think not.

Mr. Stanchfield.— To that question: "Did you see him in Albany or New York?"

Mr. Herrick.— That is objected to.

The President.— Objection sustained.

Mr. Stanchfield.— Do you know what his answer is?

Mr. Marshall.— Don't be a poor actor.

Mr. Stanchfield.— I am a good actor at times. Will your Honor do me the kindness to read that answer?

(The transcript from which Mr. Stanchfield was reading was handed to the Presiding Judge.)

The President.— Oh, I think you are right, Mr. Stanchfield. That answer makes it competent, while apparently the question did not call for it.

Mr. Stanchfield.— I mean precisely what I said, that I did not intend to transgress your ruling.

The President.— You are correct.

Mr. Stanchfield (reading).—"Q. Was anybody present when you saw Mr. Marshall excepting you and he? A. I refuse to answer that question, too."

The President.— Was there a refusal before that?

Mr. Stanchfield.— Yes.

The President.— Then you can read the question and the refusal there.

Mr. Stanchfield (reading).—"Q. Did you see him in Albany or New York? A. I refuse to answer that question."

The President.— That is competent.

Mr. Stanchfield (reading):

"Q. Did you see him uptown or downtown in New York? Or did you see him in Albany? A. I refuse to answer any question as to where, when, and who was present when I saw Mr. Marshall.

"Q. I am not asking you for your communication with him. I am asking you for the place of communication? A. Well, I refuse to answer that question. It is purely a personal matter.

"Q. Referring to campaign contributions. Do you say he didn't give one? A. I refuse to answer that question, on the ground previously stated, that I refuse to answer any question whatsoever appertaining to the Governor's campaign fund unless I am represented here by counsel.

"Q. I am asking you now if, in October, 1912, you did not get a check from Mr. Marshall for the Governor's campaign fund, a contribution? A. I refuse to answer that question on the same grounds.

"Q. Do you remember this check that Mr. Elkus sent in for a campaign contribution?"

Mr. Herrick.—What page are you reading from?

Mr. Stanchfield.—Page 42 near the bottom. (Continuing reading.)

"A. I refuse to answer any questions appertaining to the campaign expenses of the Governor, unless I am represented here by counsel so that the whole story may by both sides —"

Q. What is that language? A. I do not seem to be able to find where you are reading.

Mr. Stanchfield.—(Continuing reading):

"I am represented by counsel so that the whole story by both sides may be given and nothing be discolored.

"Q. You have not told any part of the story yet? A. I have not, and I do not intend to, unless I am represented by counsel so that the whole story will be told."

"Q. In addition to the checks coming in every day, there

was cash coming in, was there not? A. I refuse to answer that question on the same ground.

"Q. Every day during October, did not cash come in in envelopes? A. I refuse to answer that question on the same ground I have previously stated.

"Q. Every morning, in the morning's mail, didn't there dozens of letters come in enclosing checks and enclosing cash, even down to so small an amount as $2? A. I refuse to answer that question on the same ground as I have refused to answer all previous questions relating to Governor Sulzer's campaign fund.

"Q. Did you ever report any of those campaign funds? A. I refuse to answer that question on the same ground as I have refused to answer all previous questions pertaining to the Governor's campaign fund.

"Q. I ask you to look at Exhibit 35, and tell us whether any of the amounts that are set forth there, aggregating $5,460, represent cash? A. I refuse to answer that question on the ground stated in answer to your previous questions, that anything relating to the Governor's campaign fund, any question asked by you, I refuse to answer unless you permit me to be represented by counsel, in order that the whole story may be told.

"Q. I thought you might be willing to tell about this, as you say you did make it up? A. I don't say whether I made it up.

"Q. Didn't you make it up? A. I don't say whether I did or not. I refuse to answer that question.

"Q. You refuse to answer that? A. Yes.

"Q. You made up this statement? A. I don't say I did. I refuse to answer that question.

"Q. Then you refuse to furnish to the Committee any evidence whatsoever? A. Unless I am permitted to be represented by counsel, Mr. Chairman."

Mr. Stanchfield.— That is all.

Mr. Hinman.— If the Court please, I move to strike out all the testimony that has been read into the record with reference to this Sarecky testimony, or refusal to answer, on the ground that

no foundation has been laid therefor, and that it is incompetent and hearsay as against this respondent and not binding upon him.

The President.— I am at a loss to see how the fact of a refusal to testify can be proved in any other way except by the declaration of the witness that he won't answer. The motion will be denied.

Mr. Herrick.— That is not the question precisely. He says there is no foundation laid for it. That there is no connection shown between his statement or refusal to testify and the respondent.

The President.— First he has got to show the fact that he did refuse.

Mr. Stanchfield.— I followed this order to prove it, your Honor.

The President.— The order of proof is correct.

Cross-examination by Mr. Hinman:

Q. At a period in Mr. Sarecky's examination before the Frawley Committee, which Mr. Stanchfield has read into this record, was Mr. Sarecky asked this question:

> "Q. And did you deposit checks which were received by Governor Sulzer and indorsed to you, in that account?"

The President.— You have been objecting to that and the Court has ruled that these declarations are hearsay on that. If you want it, the other side will have the same privilege.

Mr. Hinman.— This is the same thing precisely that they have asked along the same line.

> "Q. And did Mr. Sarecky answer — and this was what occurred before any of the questions were asked and answers given which Mr. Stanchfield has read —

The President.— This is in reference to his refusal?

Mr. Hinman.— Yes, sir.

The President.— Very good.

Q. And did Mr. Sarecky reply: "A. Now, gentlemen, I want to make a statement on record before I testify further. If you are

delving into the Governor's campaign expenses, I am willing to tell everything, on condition that I be represented by counsel, because, if the story is to be told, I want both sides told — " A. That was the question and answer.

Q. And then did the Chairman of that Committee interrupt the witness with this remark: " Mr. Sarecky, if Mr. Richards asks you any question that you feel you won't answer, you have a right to refuse." A. Yes, sir.

Mr. Stanchfield.— Why don't you read the rest of that pertinent to it, what the witness said:

Mr. Hinman.— All right, if you want it in there.

Q. And then did the witness reply, " I feel that the Committee has absolutely no authority at all to conduct the investigation." A. He did.

Q. And then within a few minutes, and before there were put to him the questions which Mr. Stanchfield has read into the record, and before he made the answers which have been read into the record, was Mr. Sarecky asked this question: " Q. Where else, besides the Mutual Alliance Trust Company, in the City of New York, what trust company or banks did you personally make deposits in for the — of the Governor's campaign checks? " A. Is that going backwards or forwards?

Q. Going forward from where we were, just a page or two in your minutes; it will probably be three or four pages. And did Mr. Sarecky then reply: "A. I refuse to answer that question and all other questions pertaining to the Governor's campaign fund, unless I am permitted to be represented here by counsel, who will bring out the whole story and not one side of it, and he will give me full opportunity to explain any items that may appear doubtful on the face of it? " A. That was the question and the answer.

Mr. Hinman.— Nothing further.

Mr. Stanchfield.— I ask now in reply to read such portions of this testimony as we deem advisable, if the Presiding Judge, please.

Mr. Herrick.— That is objected to.

Mr. Stanchfield.— They cannot select certain portions of it that are manifestly hearsay, that may be regarded by them as make-weight by them, and then close my mouth upon the proposition.

The President.— Undoubtedly they cannot. When I called the attention of counsel, I have not this record before me, I thought he was going to read some declarations or testimony of Sarecky as to matters that had transpired at other places.

Mr. Hinman.— No, sir.

The President.— But it turned out I was in error in that respect, so what he has read entirely relates to the refusal and I do not think it opens the door.

Mr. Stanchfield.— Very well, that is all.

Mr. Hinman.— Mr. Stanchfield, if I may be permitted, may it appear on the record that the examination of Mr. Sarecky before the Frawley Committee, to which reference has been made, and from which record you have read this morning, took place on July 30, 1913.

Mr. Stanchfield.— I think that is correct.

JOHN C. BIRDSEYE, a witness called on behalf of the Managers, having been previously sworn, resumed the stand and testified as follows:

Direct examination by Mr. Stanchfield:

Q. Mr. Birdseye, I think you stated yesterday that you occupied an official place in connection with the State Civil Service Commission? A. Yes, sir.

Q. What is your connection with the State Civil Service Commission? A. Secretary.

Q. How long have you been its Secretary? A. More than thirteen years.

Q. How long have you been connected with it altogether? A. Nearly thirty years.

Q. Have you with you the — I will ask this just for informa-

tion — have you with you the rules that were changed in regard to Sarecky? A. I have not.

Mr. Hinman.— That is objected to, if your Honor please, on the ground that it is leading and calls for a conclusion and assumes facts not proven.

Mr. Stanchfield.— I have tried to make it clear that I wanted to find out if the rules were here just for information.

The President.— He must characterize in some way the rules that he wants to see.

Mr. Hinman.— May I be permitted to say that he could characterize rules as those which relate to a person and not to the Commission.

Mr. Stanchfield.— I will adopt your exact phraseology, Senator.

Q. Did you say you have any rules with you? A. No, sir, I have not.

Q. On or about the 21st day of July, 1913, did the State Civil Service Commission receive a communication from the Secretary to the Governor? A. Yes, sir.

Q. Have you the original of that communication before you? A. Yes, sir.

Mr. Stanchfield.— I offer that in evidence.

Mr. Hinman.— That is objected to on the ground that it is incompetent, improper, no foundation laid and hearsay.

Mr. Stanchfield.— I am not proposing to prove a foundation. I can but take one step at a time.

The President.— Now of course he will have to call the Secretary if you want him to do that. Do you wish him to do that?

Mr. Hinman.— No, sir.

The President.— Mr. Hinman says you need not produce the Secretary.

Mr. Stanchfield.— I presumed they would not raise that question. I read that in evidence:

"STATE OF NEW YORK,
"EXECUTIVE CHAMBER,
"ALBANY, *July* 21*st*, 1913.

"*To the Honorable State Civil Service Commission, Albany, N. Y.:*

"Gentlemen.— You are hereby officially notified that Louis A. Sarecky, confidential stenographer to the Governor, has filed his resignation as of date July 18th, 1913. You are requested to note this vacancy on your records.

"Very truly yours,
"CHESTER C. PLATT,
"*Secretary to the Governor.*"

Mark these copies.

Copies were received in evidence and marked Exhibit M-122 of this date.

Q. Under date of July 23, 1913, did the State Civil Service Commission receive a communication from the State Hospital Commission? A. I think, Mr. Stanchfield, the letter was received the 24th, the letter you refer to. We did not receive a letter on the 23d.

Q. You received it on the 24th? A. Yes, sir.

Q. Have you that communication before you? A. Yes, sir.

Q. It is dated, isn't it, the 23d? A. Dated the 23d; received the 24th.

Mr. Stanchfield.— I offer that in evidence.

"ALBANY, *July* 23, 1913.

"*To the Honorable the State Civil Service Commission, Albany, N. Y.:*

"Gentlemen.— The State Hospital Commission directs me to request your Commission to suspend the rule requiring examination in the case of Louis A. Sarecky of Brooklyn for appointment to the position of Lay Deputy in the Bureau of Deportation at an annual salary of $4,000. This application is made pursuant to section 15, subdivision 2 of the Civil Service Law.

"Mr. Sarecky is a person of high attainments and possesses qualifications which will make him a useful member of the force. He masters five modern languages and also knows the jargon of the different races and nationalities contributing to our Hospital population.

"Very respectfully,
"J. H. B. HANIFY,
"*Secretary.*"

Q. On the 24th of July, 1913, did the State Civil Service Commission make answer to the communication from the State Hospital Commission? A. Yes, sir.

Mr. Hinman.— The date of that, Mr. Stanchfield, please?

Mr. Stanchfield.— July 24th.

Mr. Hinman.— Thank you.

Mr. Stanchfield.— I offer that in evidence.

"*July* 24, 1913.

"J. H. B. HANIFY, ESQ., *Secretary State Hospital Commission, Albany, N. Y.:*

"Dear Sir.—Your communication of July 23d, with reference to suspending the rule requiring examination in the case of Louis A. Sarecky for appointment as Lay Deputy in the Bureau of Deportation, received and will be submitted to the Commission at a meeting to be held next week.

"Yours very respectfully,
"JOHN C. BIRDSEYE,
"*Secretary.*"

Q. Under date of July 30th, did the Civil Service Commission receive a further communication from the State Hospital Commission? A. Yes, sir.

Mr. Stanchfield.— I offer that in evidence.

"*July* 30, 1913.

"*To the Honorable the State Civil Service Commission, Albany, N. Y.:*

"Gentlemen.— By direction of the State Hospital Commission, I hereby respectfully request that the position of

Lay Deputy in the Bureau of Deportation be classified in the exempt class under the State Civil Service Rules. The claim for exemption of this position is made under subdivision 4, section 13 of the Civil Service Law. Competitive or non-competitive examination is not practicable for filling this position for the following reasons:

"First, That an immediate appointment is necessary because of the extraordinary need of assistants in this Bureau.

"Second, That there is no eligible list from which such lay deputy could be appointed at this time.

"Third, That the Commission wishes to appoint Mr. Louis A. Sarecky who is familiar with the work of the Bureau and who has become specially equipped as an investigator in some of the difficult fields to which he will be assigned for work in the State Hospital Commission.

"Peculiar and exceptional qualifications of educational character are required for the position and Mr. Sarecky is a linguist who masters five modern languages and also knows the jargon of the different races or nationalities contributing to our hospital population.

"Mr. Sarecky's service will be paid for at the rate of $4,000 per annum.

"Yours respectfully,
STATE HOSPITAL COMMISSION,
"By J. H. B. Hanify,
"*Secretary.*"

Q. On the 30th of July, 1913, did the State Civil Service Commission hold a meeting? A. It did, yes, sir.

Q. On July 30th the State Civil Service Commission held a meeting? A. Yes, sir.

Q. At that time was there a resolution passed in accordance with the correspondence that I have just been reading? A. A resolution was passed in accordance with the second letter, the letter of July 30th, which you have just stated.

The President.— That is putting it in the exempt class.

The Witness.— Yes, sir.

Mr. Stanchfield.— I will read this:

"STATE OF NEW YORK:

"STATE CIVIL SERVICE COMMISSION, ALBANY.

"At a meeting of the State Civil Service Commission held July 30, 1913, it was, on motion,

"Resolved, That subject to the approval of the Governor, the classifications of positions in the exempt class in the office of the State Hospital Commission be and hereby is amended by adding thereto the following:

"Lay Deputy, Bureau of Deportation."

"Competitive or non-competitive examination for said position being found to be not practicable.

"Signed. JOHN C. BIRDSEYE,
"*Secretary.*

"Approved, July 31st, 1913,
"WILLIAM SULZER,
"*Governor.*"

Q. On the 31st day of July, 1913, did the State Civil Service Commission transmit on this subject a communication to Governor Sulzer? A. Yes, sir.

Mr. Stanchfield.— I offer that in evidence.

"July 31st, 1913.

"Honorable WILLIAM SULZER, *Governor:*
"Executive Chamber Albany, N. Y.

"Dear Sir:

"By direction of the State Civil Service Commission I transmit to you herewith for consideration and approval copies of resolution classifying in the exempt class the position of lay deputy, Bureau of Deportation, office of the State Hospital Commission, which was adopted at a meeting held yesterday. This resolution is adopted upon the application of the State Hospital Commission reading as follows:

"'By Direction of the State Hospital Commission I hereby respectfully request'"—

Mr. Herrick.— No use reading it again.

Mr. Stanchfield.— Yes there is, because this was sent to Governor Sulzer. I will read the original if you produce it but I suppose you take the same position with reference to this as you have to other communications.

Mr. Herrick.— Oh yes.

Mr. Stanchfield.— It is quite necessary in my judgment that I should read it:

> "'By direction of the State Hospital Commission I hereby respectfully request that the position of Lay Deputy in the Bureau of Deportation be classified in the exempt class under the State Civil Service Rules. The claim for exemption of this position is made under subdivision 4, section 13 of the Civil Service Law. Competitive or non-competitive examination is not practicable for filling this position for the following reasons:
>
> "'First, that an immediate appointment is necessary because of the extraordinary need of assistants in this Bureau.
>
> "'Second, that there is no eligible list from which such Lay Deputy could be appointed at this time.
>
> "'Third, that the Commission wishes to appoint Mr. Louis A. Sarecky who is familiar with the work of the Bureau and who has become specially equipped as an investigator in some of the difficult fields to which he will be assigned for work in the State Hospital Commission.
>
> "'Peculiar and exceptional qualifications of educational character are required for the position and Mr. Sarecky is a linguist who masters five modern languages and also knows the jargon of the different races or nationalities contributing to our hospital population.
>
> "'Mr. Sarecky's services will be paid for at the rate of $4,000 per annum.'
>
> "Yours very respectfully,
>
> "JOHN C. BIRDSEYE,
>
> "*Secretary.*"

Q. On or about the 1st of August, 1913, did you send to the State Hospital Commission a communication? A. I did.

Mr. Stanchfield.— I will read that in evidence.

"State Hospital Commission, Albany, N. Y.:

"Gentlemen.— I have to inform you that the following resolution adopted by the State Civil Service Commission, July 30, 1913, was approved by the Governor on July 31, 1913."

"This is simply a copy of the resolution. I will not take the time to read it.

"In due time, kindly send formal notice of the appointments mentioned.

"Yours very truly,

"JOHN C. BIRDSEYE."

Q. On August 12, did you receive a notification of the appointment from the State Hospital Commission? A. It was received August 13th.

Q. August 13th? A. Yes, sir.

Mr. Stanchfield.— (Reading):

"TO THE HONORABLE, THE STATE CIVIL SERVICE COMMISSION:

"Gentlemen.— By direction, I beg to notify you of the following appointments in the office of the Commission's Bureau of Deportation:

"Louis A. Sarecky, Lay-deputy, July 18, 1913. Salary, $4,000 per annum.

"A. Bermann, Secretary interpreter, August 1, 1913. Salary, $2,000 per annum.

"D. J. Jordan, clerk detailed as bookkeeper, August 5, 1913. Salary, $1,200 per annum.

"Very respectfully,

"J. H. HANIFY,

"Secretary."

Mr. Stanchfield.— You may cross examine.

Cross-examination by Mr. Hinman:

Q. Mr. Birdseye.— What constituted the State Hospital Commission in 1913? How was it constituted? A. Why, my answer

is based only on newspaper records. Part of the time it was constituted, it consisted of Commissioners May, Parker, and another part of the time, Commissioners May, Parker and Straus. I don't know officially how it was constituted.

Q. Do you know how it was constituted in July and August of 1913?

Mr. Stanchfield.— What is that, the State Hospital Commission?

Mr. Hinman.— Yes, the State Hospital Commission.

A. On their letter head I understood it was Eugene M. Straus, James V. May, M. D., and Fred. N. Parker.

Q. Do you know what statute it was, and when the statute was passed, which provided for the creation of this Commission, of which Mr. Sarecky became a member? A. I do not.

Q. Wasn't your Commission advised of the creation of that board or body? And did your Commission have to do with the qualifications of members to be appointed to and in that board, on the staff of the board? A. The Commission was undoubtedly advised to the extent of being informed of the appointments which were made on that board, as to names, titles, duties and salaries.

Q. What is your recollection as to when that board first came into existence? A. I should say upwards of ten years ago.

Q. So this position was one that you knew had existed for a considerable period of time prior to July and August, 1913? A. I cannot say with reference to the position. I knew that the board existed, and as to the various titles of the members of the board, I cannot speak with knowledge.

By Mr. Hinman:

Q. What was the official name or title of this board, in the beginning, when it first came into existence? A. I can't answer; I don't know.

Q. Was it — when did this board or bureau, known as the bureau of Deportation, first come into existence, so far as you now recall? A. So far as I now recall, the title contained in these letters of lay deputy I think was the first it was brought to my knowledge or attention.

Q. Did you not know that for years there had been a board or bureau exercising these same functions, and that that law had been amended and revised during the year 1912? A. I didn't know it officially. I knew that there was a board which I believed the title was the Board of Alienists.

Q. Originally? A. Originally, and what happened to the board by title or amendments to the statute since that original organization, I cannot state with knowledge and authority.

Senator Wagner.— Mr. President, may I ask Mr. Birdseye a question.

The President.— Senator Wagner.

By Senator Wagner:

Q. I notice that there were two letters, Mr. Birdseye, making application for the exemption of lay deportation deputy, one of them dated the 23d, and the other the 30th? A. Yes, sir.

Q. Is that true? A. Yes, sir; there were two letters; they were different letters, though, however, the applications were different.

Q. Well, my recollection is that they made a request for the same thing.

The President.— No; is that the two letters, the ones that you spoke of, the one requesting a suspension, the first requested a suspension of the rules, Senator; the second there was a reclassification so as to put it in the exempt class, is that correct?

The Witness.— Exactly.

Q. And there was no action taken by the Commission upon the first application? A. The first letter of July 23d was presented to the Commission at a meeting held in Poughkeepsie July 29th. At that meeting the letter of July 23d and its request was ordered continued on the calendar. The Commission met in Albany the following day, July 30th, at which time the letter of July 30th was presented. The letter of the meeting of July 30th shows that the letter of July 23d was ordered filed; another application relating to the same matter, under date of July 30th, being before the Commission. So that is the history of the letter of July 23d.

The President.— Does that answer the question of the Senator?

Senator Wagner.— Yes, sir.

Redirect examination by Mr. Stanchfield:

Q. Now, Mr. Birdseye, you stated that the designation of Mr. Sarecky, was the first designation of a layman to that board of which you knew of since you have been connected with the Civil Service Commission? A. It was the first appointment of a layman that I recall.

Q. And had the places on that deportation board theretofore been filled by physicians? A. So far as my memory serves me at this time, yes.

Q. Now, do you know Mr. J. B. Hanify, whose name is appended to this correspondence, as secretary to the State Civil Service Commission? A. Yes, sir.

Q. When was he appointed to that place? A. I can't tell exactly, without referring to the records of the office; it was on or about the 1st of July, if my memory serves me rightly.

Q. Of this year? A. 1913, yes, sir.

Mr. Stanchfield.— That is all.

Senator Pollock.— Mr. President.

The President.— Senator Pollock.

By Senator Pollock:

Q. I would like to ask Mr. Birdseye, whether as a result of the official action on the part of the State Hospital Commission and the State Civil Service Commission, and the subsequent approval of the Governor, the result was that Louis A. Sarecky received his salary as deportation deputy, beginning with July 18, 1913? A. Yes, sir.

Recross-examination by Mr. Hinman:

Q. Who were the members of the State Civil Service Commission in July, 1913? A. Jacob New, Meyer Wolff, M. D., James A. Lavary.

Q. How many of those members were present at the meeting

at Poughkeepsie to which you have referred? A. Three, all of them.

Q. How many of those members were present at the time when this resolution to which you have referred was moved and adopted? A. Two.

Q. Who were those two? A. Commissioners Wolff and Lavary.

Q. By whom was the resolution offered? A. I don't recall.

Q. Have you the official records of the minutes of that meeting and of the resolution that was passed? A. I have in the office the minutes of that meeting, and I have here the actual resolution signed by the secretary of the Civil Service Commission and the Governor.

Q. And is that the resolution — has that communication or that paper been read in evidence? A. It has, yes, sir.

Q. And do you know of your own knowledge that the resolution, as set forth in that communication or letter, is an exact copy of the original resolution as moved and adopted? A. It is, yes, sir; there are three of those resolutions, one in the office of the Secretary of State, one in the office of the Governor, and the third I hold in my hands.

Mr. Hinman.— If the Court please, in this connection I offer in evidence section 19 of the Insanity Law, as amended by chapter 100 — by section 7 of chapter 121 of the Laws of 1912.

Mr. Stanchfield.— You have already ruled that you would take judicial notice of the statutes of the state.

Mr. Hinman.— Let me call the attention of the Court to it and read it.

The President.— Read it without offering it at all.

Mr. Hinman.— (Reading). "There shall be established by the Commission"— that is, the Commission in Lunacy — a bureau of deportation for the examination of insane, idiotic, imbecile and epileptic emigrants and alien and non-resident insane, and to attend to the deportation or removal thereof, which shall consist of a medical examiner and such number of medical or lay deputies as may be necessary to be appointed by the Commission."

The President.— Which statute is that, Senator? Is that the original statute, or the amendment of 1912?

Mr. Hinman.— The amendment of 1912, as I have read it.

Mr. Stanchfield.— Is that all, gentlemen?

The President.— Is that all of the witness, gentlemen?

Mr. Hinman.— Yes.

Mr. Stanchfield.— If the presiding judge please, I notice the first letter of this correspondence between the Hospital Commission and the Civil Service Commission, I had it marked Exhibit M-122. May that stand for the entire correspondence, as one exhibit?

The President.— Yes, if there is no objection. There will probably be no dispute.

Mr. Marshall.— Yes.

Mr. Stanchfield.— That is all, Mr. Birdseye.

(Witness excused.)

Mr. Todd.— Mr. Cumming.

The Clerk.— You do solemnly swear that the evidence which you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer, as Governor of this State, shall be the truth, the whole truth and nothing but the truth. so help you God.

Mr. Cumming.— I do.

The Clerk.— What is your full name?

Mr. Cumming.— Robert C. Cumming.

ROBERT C. CUMMING, a witness called in behalf of the Managers having been first duly sworn, in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Todd:

Q. You are the Chief of the Legislative Bill Drafting Department of the State of New York? A. Yes, sir.

Q. How long have you occupied —

The President.— Speak a little louder, if you please?

The Witness.— Yes, sir.

Q. How long have you occupied that office? A. Thirteen years.

Q. Are you acquainted with Governor Sulzer? A. Yes, sir.

Q. Was there an occasion when Governor Sulzer sent for you and gave you some instructions in reference to drafting certain bills affecting the New York Stock Exchange? A. Yes, sir.

Q. When was that? A. Early in February, 1913.

Q. You went to the Executive Chamber? A. Yes, sir, at his request.

Q. And you had a conversation with the Governor? A. Yes, sir.

Q. Will you please state that conversation? A. He submitted to me —

The President.— One moment, they can't hear that. Will you look at the furthest member of the Court and raise your voice to the highest pitch possible.

The Witness.— The Governor submitted to me certain memoranda, and said that he wished to have bills prepared in accordance with those memoranda. These memoranda related to transactions in securities —

Mr. Marshall.— Have you got those memoranda?

The Witness.— I have not. He also suggested one or two other bills which were not incorporated in memoranda. Accordingly, I prepared the bills, or our department prepared them, and submitted copies to him. Later, perhaps a week later, he requested me to prepare several other bills, among them the bill incorporating the Stock Exchange, and these were prepared in accordance with his suggestion and the copies submitted to him.

Q. Now, in reference to the preparation of the Stock Exchange Incorporation Bill, what were your instructions, the particular instructions, from the Governor, in reference to that? A. I don't know as there were any particular instructions, except that he desired to have it prepared as speedily as possible, saying that he

wished to have it introduced for the consideration of the Legislature.

Q. And how long did you take in the preparation of it? A. I think the bill was — I think the matter was submitted to me on, oh, noon of one day, and we prepared the bill for introduction the following day; possibly the second day.

Q. After you had prepared this proposed bill for incorporating the Stock Exchange, what did you do with it? A. I delivered copies to the Governor personally.

Q. Was there any conversation at that time between you and the Governor? A. I don't think so, except that he sent for members of the Legislature, and in my presence delivered copies to them for introduction.

Q. What members of the Legislature did he send for? A. Senator Stilwell, and Mr. Levy of the Assembly.

Q. What did he do or say in reference to this bill at that time? A. Simply that he desired them — that these were additional bills relating to the Stock Exchange which he desired to have them introduce. I don't think there was very much conversation.

Q. He told them he desired to have them introduce these bills in their respective houses? A. Yes, sir.

Mr. Todd.— In order to make the record complete, and with the permission of the other side, I would like to ask a few leading questions, calling attention to the exact number of the bill, in order to save time.

Mr. Marshall.— You may, to identify them.

Mr. Todd.— To identify the bill.

Mr. Todd.— Q. Did you prepare the bill which was enacted into chapter 475 of the Laws of 1913, entitled "An act to amend the Penal Law in relation to false representations concerning securities?"

Mr. Herrick.— What page are you reading from?

Mr. Todd.— From page 992.

A. We prepared a bill of that title. Some of those bills may have been amended in the Legislature after they left our Department.

By Mr. Todd:

Q. What I want to know is, these bills that I refer to now, are they the bills that the Governor requested you to prepare, and which you did prepare, and after having prepared them as you have stated, deliver them to him? A. That is one of them.

Q. Was another one of those bills, chapter 476 of the Laws of 1913, entitled "An act to amend the Penal Law in relation to reporting or publishing fictitious transactions in securities?" A. Yes, sir.

Q. Is another one of those bills enacted into law known as chapter 500 of the Laws of 1913, entitled "An act to amend the Penal Law in relation to transactions by brokers after insolvency?" A. Yes, sir.

Q. And is another one of those bills Senate bill, introductory No. 597, entitled "An act to amend the penal law, in relation to bucket shops?" A. Yes, sir.

Q. And is another one of those bills what is now chapter 236 of the Laws of 1913, entitled "An act to amend the penal law, in relation to trading by brokers against customers' orders?" A. Yes, sir. We prepared such a bill.

Q. And is another one of those bills Senate bill No. 641, entitled "An act to amend the penal law, in relation to the manipulation of prices of securities, and conspiring movements to deceive the public?" A. Yes, sir.

Q. And is another one of those bills, Senate bill No. 831, entitled "An act to amend the penal law, in relation to delivery to customers all memoranda of transactions by brokers?" A. Yes, sir.

Q. Is another one of those bills Senate bill No. 832, entitled "An act to amend the penal law, in relation to discriminations by exchanges or members thereof?" A. Yes, sir.

Q. And was the bill in relation to the incorporation of a Stock Exchange, which was known as Senate bill 883, and was entitled "An act to amend the banking law, in relation to the organization and regulation of stock corporations" one of the bills? A. Yes, sir.

Mr. Marshall.— Eight hundred and thirty-three, isn't it.

Mr. Todd.— Eight hundred and thirty-three, that should be.

Q. Was another one of those bills Senate bill No. 902, entitled "An act to amend the general business law, in relation to the listing of securities for sale on stock exchanges?" A. Yes, sir.

Q. And was another one of those bills Senate bill No. 638, "An act to amend the general business law, in relation to interest permitted on advances on collateral security?" A. Yes, sir.

Mr. Todd.— That is all.

By the President:

Q. You prepared such bills, but you cannot say whether they were amended in particulars in the Legislature before they were passed? A. I cannot. I have made no comparisons since they became laws.

Mr. Marshall.— No cross-examination.

Mr. Todd.— That is all.

Mr. Kresel.— Now, Mr. Hinman, I can answer your question in regard to Mr. Brady.

Mr. Hinman.— May it be conceded that the check referred to by the witness Daniel M. Brady, on pages 730 and 731 of the printed record as having been drawn by him and delivered to Judge Conlon, was so delivered to Judge Conlon at about 11 o'clock on election night, November 5, 1912.

Mr. Kresel.— I should prefer, if you do not mind, to read five or six questions with reference to that, then we will have just what he said?

Mr. Marshall.— Let us look at it.

Mr. Hinman.— I have it here.

Mr. Kresel.— I am reading from page 5.

Mr. Hinman.— You mean by this, the questions that were asked by you on behalf of the Board of Managers of Mr. Brady—

Mr. Kresel.— Yes, sir.

Mr. Hinman (continuing).— When he appeared before the Board of Managers?

Mr. Kresel.— Right.

Mr. Hinman.— And that date was September 12, 1913?

The President.— Yes. You have that by other witnesses.

Mr. Kresel.— Yes, that is right, September 12th.

Mr. Hinman.— Then it may be conceded that at that time, before the Board of Managers, Mr. Brady —

The President.— He is going to read this right into the evidence.

Mr. Kresel.— Just what he said.

Mr. Hinman.— I understand that Mr. Daniel M. Brady, who has been a witness in this proceeding, was asked the following questions and made the following replies.

Mr. Kresel.— Yes.

Mr. Marshall.— And that they may be read into the record here.

Mr. Hinman.— And that they may be read into the record here.

Mr. Kresel (reading):

"Q. Having destroyed the check, will you now describe the check, and what bank it was drawn on? A. It was drawn on the National City Bank.

"Q. In this city? A. Yes, sir.

"Q. And on the account of Daniel M. Brady? A. My personal account.

"Q. Do you remember what date? A. I think it was dated the day before election.

"Q. The day before election? A. Yes, sir."

Mr. Hinman.— No.

Mr. Kresel.— That is all right (reading):

"Election day was on the 5th of November, then this was the 4th of November? A. It might have been the second or third.

"Q. It was on the day shown by the date on the check that you handed to Judge Conlon? A. I handed it to him about 11 o'clock Election night. About 11 o'clock.

"Q. Are you quite sure of that, Mr. Brady? A. I am very sure."

I think that answers your inquiry.

Mr. Hinman.—Your record is not like ours, but it is not very material.

Mr. Kresel.—That is the official record. I don't know what you have before you.

Mr. Marshall.—That is all right.

The President.—There you have the evidence of the witness, that it was 11 o'clock, and he is very sure of it.

Mr. Kresel.—Yes.

The President.—What more do you want?

Mr. Todd.—We offer in evidence the message of Governor Sulzer to the Legislature, dated April 10, 1913, and I desire to read from it the following.

Mr. Hinman.—If you will give me the date again, please.

Mr. Todd.—April 10, 1913. (Reading):

"I further recommend reducing the number of names required on a nominating certificate. The authorization of registration on Primary Day and a proper limitation of the amount that may be expended by any candidate for the purpose of securing a nomination.

"The law should also prescribe the expenses which may be lawfully incurred in connection with the candidacy for nomination, and should insure the publicity of all expenses."

(The message was marked Exhibit M-123.)

Mr. Todd.—I also offer in evidence the special message of Governor Sulzer to the Legislature on June 16, 1913, and I desire to read into the record the following from that message:

"14. The Penal Law should be amended, limiting to a reasonable sum the amount of money that may be expended by a candidate, or any one on his account, for the purpose of seeking a nomination to public office, any violation of the same to be a felony and make the nomination, if secured, a nullity."

(The message was received in evidence and marked Exhibit M-124.)

Mr. Todd.— May I ask the other side if they are ready to make a concession about that?

Mr. Marshall.— We have not had time to make any examination. We don't know anything about the accuracy of it.

Mr. Kresel.— Call Mr. J. B. Gray.

The Clerk.— Mr. Gray, you do solemnly swear that the evidence which you shall give upon this hearing, upon certain articles of impeachment preferred against William Sulzer, as Governor of this State, shall be the truth, the whole truth and nothing but the truth, so help you God?

The Witness.— I do.

The Clerk.— What is your full name.

The Witness.— John Boyd Gray.

JOHN BOYD GRAY, a witness called in behalf of the Managers, having been first duly sworn, in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Brackett:

Q. Mr. Gray, your age? A. 33.
Q. Residence? A. New York city.

The President.— Mr. Gray, just look at the farthest member of the Court, and, instead of turning to the counsel who questions you when you make your answers, look in that direction.

The Witness.— All right, your Honor.

By Mr. Brackett:

Q. Your occupation? A. Broker.

Judge Werner.— I don't hear it.

The Witness.— Broker.

By Mr. Brackett:

Q. Individually or a member of a firm? A. Member of a firm.

Q. What is the name of your firm, Mr. Gray? A. Fuller & Gray.

Q. Where is its office, or are its offices located? A. 71 Broadway, Temple Bar Building, Brooklyn; Yonkers, White Plains, 501 Fifth avenue.

Q. In which office have you given your personal attention? A. No particular office.

Q. Do you mean to say all of them indifferently? A. All of them at times.

Q. How long has the firm been in existence? A. About two years.

Q. Has there been any change since it was formed in the personnel of the partnership? A. No, sir.

Q. Are you a member of the Stock Exchange? A. No, sir.

Q. Was the other member of the firm? A. He is.

Q. Of whom has the firm been composed? A. Arthur L. Fuller and myself.

Q. Where has been your residence? A. Haddon Hall, Riverside drive and 137th street.

Q. Do you know F. L. Colwell? A. I do.

Q. How long have you known him? A. About three years.

Q. What relations have you had with him during that time? A. I don't know what you mean.

The President.— Has he been a customer of yours?

The Witness.— He has been a customer of the firm.

Q. Any other relations, employee or otherwise? A. No, sir.

Q. During that time has he rendered services for the firm? A. No, sir.

Q. In any capacity? A. None whatsoever.

Q. Has the firm paid him any salary or wages during that time? A. Haven't paid him any money.

Q. Whatever? A. Whatever.

Q. Did he have an office anywhere to your knowledge? A. We allowed him the use of a desk at 71 Broadway, for his convenience.

Q. And his name is in the telephone book at the same telephone number as the name of the firm at that place, is it not? A. Yes, sir.

Q. When did you last see him? A. Just previous to his disappearance. I don't know just when that was.

Q. I did not catch your answer? A. I say about the middle of August.

The President.— He said just previous to his disappearance.

Mr. Brackett.— Yes.

Q. Do you know where he is now? A. I do not.

Q. Have you had any communications from or message of any kind in any way since the time you have mentioned, about the middle of August? A. I have not.

Q. Have you sent him any? A. I have not.

Q. Or has the firm or any member of the firm, to your knowledge? A. No, sir.

Q. But he has received his mail at the office of Fuller & Gray, do you know that? A. Yes, sir.

Q. At the 71 Broadway office? A. Yes.

Q. Were there times he was in the other offices of the firm? A. I think so, yes.

Q. Where was his home just prior to the time you saw him last? A. Yonkers.

Q. Will you tell me what street in Yonkers, and the number? A. North Broadway, 790.

Q. Do you know whether it was a house of his own or a rented house? A. I do.

Q. Which? A. A rented house.

Q. And who was the owner? A. I am the owner.

Q. How long had he been your tenant? A. Six or eight months.

Q. Is he related to you in any way or any member of your firm? A. No, sir.

Q. Do you know whether he is married or single? A. A widower, I believe, or divorced; I don't know which.

Q. In this house, does he keep house, or does he board? A. I believe he kept house.

Q. And do you know what family he has? A. Yes, I think I do. He has a daughter and a son.

Q. And did the son live there with him? A. I believe so.

Q. And did the daughter, do you know? A. I believe so.

Q. Where was it that you last saw him? A. 71 Broadway.

Q. What time of the day? A. I think about noon time.

Q. Did you have any conversation with him that day? A. I did.

Q. What do you know about his going away?

Mr. Hinman.— That is objected to in so far as it calls for or the witness attempts to give any conversation with Colwell, on the ground that it is incompetent, improper and hearsay.

Mr. Brackett.— I suppose it is competent for us to show the reason we don't produce him.

The President.— You showed you cannot get him. That is a very good reason.

Mr. Brackett.— This is the same line.

The President.— That is the best reason.

Mr. Brackett.— I want to show it again.

The President.— Now, you can show that you have had a process server, and he was unable to serve him.

Mr. Brackett.— I want to show by this man he has not been in his office since that time.

The President.— That you may show.

Mr. Brackett.— And the circumstances under which he went away.

The President.— Now, Senator, you can confine that to simply asking him what his proposed journey was when he spoke, or something of that kind. I think you have a right to do that, but don't get any extraneous matter as to the reasons why he left.

Mr. Brackett.— I will adopt the words of the Presiding Judge.

Q. What was his proposed journey?

The President.— When he last saw you, did he tell you he was going away?

The Witness.— Yes, sir, he did.

The President.— Where did he tell you he was going?

The Witness.— To Albany.

The President.— Was that all he told you about him —

The Witness.— No, sir, it is not.

The President.— Don't get the reason, but he told you he was going to go nowheres else from Albany.

The Witness.— No, he did not tell me he was going anywheres else. He said he was going to Albany.

The President.— Did he say whether he was coming back or not, or about his staying away?

The Witness.— No, he did not say he was coming back, or how long he was going to stay away.

Q. Did he add anything or say anything with respect to his preparations or his baggage that gave you any information as to whether he was going farther than Albany or not?

Mr. Hinman.— Objected to on the same ground, that it is hearsay, improper and no foundation laid.

The President.— That qualifies an act, and I think it is competent. Did he give any directions about his mail or baggage, or anything of that character?

The Witness.— He did not give me any directions.

The President.— Did you hear him give any directions?

The Witness.— I heard him call up his house and tell them to bring his luggage to the Yonkers station.

Q. At what train? A. I cannot remember what train.

Q. At a north or southbound train? A. He was going to Albany. I suppose a northbound train.

Q. I understood that the language was a northbound train. That was my reason for pressing it? A. You will pardon me a minute. The last time I saw Mr. Colwell was the last day that the Frawley Investigating Committee was in session. That will place the date. I cannot remember the exact date.

Q. Do you know whether he had been subpoenaed for that day before that Committee? A. Well, he had told me he was under subpoena.

Q. Did he tell you where he was going, except to Albany? A. I don't know how to answer that.

Q. Did he say anything further in that conversation indicating the precise place he was going, or whether he was going or whether he was going to say?

Mr. Hinman.— I object to it, except so far as the answer is yes or no.

The Witness.—Yes.

The President.— I don't understand the objection, Senator.

Mr. Hinman.— The witness has already stated he was going to Albany.

The President.— He can test his recollection and see if the witness cannot recollect any further statement on the subject.

Q. Where did he say he was going in Albany? A. To see William Sulzer.

Q. Do you recall whether that was in the early part or latter part of the day? A. I believe it was noontime, around the middle of the day.

Q. When you say you believe, you mean that is your best recollection? A. That is my best recollection.

Q. Was there a time in the month of October, 1912, when you had a conversation with Mr. Colwell with respect to an account

in your office, or opening an account in your office? A. Yes, there was.

Q. About when? A. The books will show it. I don't know the date.

Q. About the 21st of October.

The President.— The date as fixed by your partner of the opening of the Colwell account, is what?

Mr. Kresel.— October 23d.

Mr. Brackett.— 1912.

The President.— Is it about the time that account was opened?

The Witness.—About two or three days previous to that.

Q. Where was the conversation? A. In the Yonkers office.

Q. State it. A. He asked me to get a quotation on Big Four, and said he expected to give me an order on it.

Q. What did you do? A. I quoted it and gave him the bid and asked price. He gave me an order, that is my recollection, but whether it was in two or three days before we secured the first 100, I cannot say.

Q. To buy it at a specific sum or at the market price? A. To buy at a specified price.

Q. Was there any deposit made? A. I think when the order was executed there was a deposit made, or just previous to the order being executed.

Q. Was there any at the time the order was given? A. No, I don't think so.

Q. The exhibit in evidence, No. 72, which is a transcript of an account with Fuller & Gray, shows that there was 100 CCC purchased at 60 on the 21st of October, charged at $6,012.50, and that on the 22d of October the first credit appears in the account of cash $1,500. Does that refresh your recollection as to the time of the transaction, or of the original conversation you had, and as to whether or not there was any deposit at the time the purchase was made? A. Evidently, from that statement, the deposit was made the day the stock was purchased.

Q. Although not credited until the 22d? A. There is a reason for that.

Q. I understand that. I am presently coming to it. Where was the deposit made? A. Our check books will have to show. I cannot answer that question. I presume in Yonkers.

The President.— He may think that is the bank, Senator. Explain to him what you mean.

Q. You cannot tell in which office the deposit was made without the books? A. Oh, yes, I think I — from memory I would say that it was made in the Yonkers office.

Q. Was it handed to you personally? A. I believe it was.

Q. Were there more than one on the same day? A. I cannot answer that. I don't know.

Q. I show you two check books or stubs that are in evidence, and ask if that will refresh your recollection? A. Two separate deposits made.

Q. Does that refresh your recollection any more certainly as to where the deposit was made? A. Of course I know where the deposits were made.

Q. In the Yonkers office? A. In the Yonkers office.

Q. You know that, because the deposit is marked made in your bank in Yonkers?

The Witness.— One was made in Yonkers and the other was made in Brooklyn.

Q. There were two credits or two payments made on this one of the 22d of October, were there not? A. One of $1,500 and one of $1,000, yes, sir.

Q. And they were both to you? A. It is my belief that they were made to me.

Q. And both in the Yonkers office? A. Yes, I think.

Q. Which deposit is in the Brooklyn bank, the $1,000 or the $1,500? A. The $1,000 deposit in the Brooklyn, and the $1,500 one in the Yonkers bank.

Q. Does the deposit of $1,000 in the Brooklyn lead you to believe that the deposit of that amount was made in the Brooklyn office? A. It does not lead me to believe that, no.

Q. It may have been remitted over to Brooklyn? A. That is it.

Q. Did you loan any money to Colwell on the day he went away? A. No, sir.

Q. Give him any? A. No, sir.

Q. Give him anything for his expenses when he went away? A. No, sir.

Q. Do you know how his expenses were made? A. I do not.

Q. Was he under a salary to your firm? A. He was not.

Q. And do you mean to say that he did not receive any money from your firm for services, either as wages, commissions, or in any other way? A. He did not.

Q. There was no $50 a week paid to him, or any other sum? A. He acted as private secretary to me at one time, and I paid him personally, but that was not paid by the firm. He has never been employed by the firm. It was simply a personal matter.

Q. When was he your private secretary? A. For about six or eight months.

Q. During what period? A. Well, from October back about eight months.

Q. And ending what time in October? A. About the time this transaction took place.

Q. About the 21st of October? A. Somewheres along in there.

Q. And not extending as far as November? A. I don't believe so.

Q. You swear positively? A. To the best of my recollection that is true.

The President.— October of what year?

Q. 1912. Of course you mean October, 1912? A. Yes, sir.

Q. What compensation did he receive as your private secretary? A. $50 a week.

Q. And what were his duties? A. Look after my personal affairs.

Q. Do you mean by that to keep your own private bank account and look after your real estate, and things of that kind? A. Yes, sir.

Q. Anything else? A. Anything that was required of him of a personal nature.

Q. Did he report any orders at any time for the purchase of stocks, or the sale to your firm? A. No, sir.

Q. Without it being a part of his stated duty as your private

secretary, is it not a fact that there were times when he did give or report orders, either of purchase or sale, to the firm, that were executed by the firm? A. I don't understand exactly what you mean.

Q. The question is substantially this, to repeat it. Without it being his stated duty, as your secretary, or any part of his stated duty, did he not at times report to the firm purchases or sales of stocks that it was desired the firm should execute? A. You mean did he bring any business to us?

Q. Yes. A. He brought in what he could, yes.

Q. He had formerly been a broker himself? A. Yes, formerly.

Q. About how old a man is Colwell? A. I think he is in the fifties.

Q. Having made the purchase of 100 shares of stock, when was it delivered to the firm?

The President.— You have got it there on that exhibit. Show it to him.

Q. Delivered to Fuller & Gray? A. Well, usually it takes a couple of days after we purchase.

Q. Does the 21st of October, entered on that exhibit, indicate the day the firm received it, or the day the contract of purchase was made on the Stock Exchange? A. It indicates the day the purchase was made.

Q. On the floor? A. On the floor.

Q. Is there anything there that will help you, so that you can tell when the stock was actually received, and delivery made to the firm? A. Not to the firm.

Q. Well, to anybody representing the firm? A. No, it does not show on this statement. It would only show the delivery to the customer.

Q. What date was the stock purchased on the 21st of October, delivered to the customer? A. October 31st.

Q. Shown how on the exhibit? A. Buy 200 Big Four delivered. That is all. It balances the account.

Q. On the credit side of the account? A. On the credit side of the account.

Q. How was the 100 shares purchased on the 22d of October,

paid, other than the $1,500 and the $1,000 that you have already mentioned? A. Well, on the 28th of October, there was a deposit of $500, and on the 31st of October, the day that the 200 shares was delivered, the balance was paid, $8,825.

Q. What was the first payment of $1,500, made by check or in currency? A. Cash.

The President.— What does that mean, currency?

The Witness.— Currency.

Q. Bills? A. Bills.

Q. The second, or $1,000 credit? A. Same thing.

Q. The third, $500? A. Same thing.

Q. And the furth, $8,800? A. Cash, currency.

Q. Did you make the delivery? A. I make the delivery?

Q. Yes? A. I don't remember that I did. I think Mr. Coe made the delivery.

Q. Were these amounts severally handed to you? A. I think the three first amounts were paid to me, and the large amount, $8,800, was paid to Mr. Coe when he delivered the stock.

Q. Was there anything said at the time that these three cash items were passed to you, as to where it came from? A. By who?

Q. Either you or Mr. — the person with whom you had the conversation? A. Was there any conversation in regard to it?

Q. Yes? A. I don't remember any particular conversation.

Q. Did you make any inquiries to where — as to why this was paid in cash or where it came from? A. No, sir.

Q. Is it a customary transaction for cash to be used in such matters? A. I would not call it customary, no, sir.

Q. Well, checks are usually used almost universally? A. Usually.

Q. It did not excite your attention, so that you made any comment on the subject, as to why cash was thus tendered to you and given to you, or made any inquiries on the subject? A. No.

Q. By whom were those amounts given to you? A. Mr. Colwell.

Q. Your private secretary? A. Yes, sir.

Q. That was living in your house? A. (Interrupting) He was not at that time.

Q. What? A. He was not at that time.

Q. You say down to what time? A. About that time.

Q. Well, by which I gather that you mean it may have been a few days before or a few days after? A. Yes.

Q. That his employment ceased? A. Yes, sir.

Q. Which? A. A few days before, I think.

Q. Well, this man who had been your private secretary and who was your tenant, he was the man? A. He was the man.

Q. When he was accustomed to bring in orders to you, as you say occasionally he did, was he in the habit of stating for whom the orders were? A. He was not.

Q. In whose name were purchases made or carried on your books where he brought in an order for the firm? A. In No. 500 account.

Q. How long had that account been in existence? A. This was the opening of it, October —

Q. (Interrupting) I am referring to other times. You say that he occasionally, while your private secretary, brought in what business he could? A. He did.

Q. Now, when he brought in an order did he state to you for what or for whom the order was being executed?

Mr. Hinman.— We object to the form of the question on the ground that, as I recall it — I may be in error — but it assumes facts which the witness has not testified to, I think. The testimony of the witness was that this man did bring in orders, but I don't think it was limited or that he said that it was during the time he was secretary. I may be wrong.

The President.— I don't think — he said that he brought them in on occasions. I don't think he qualified it.

By the President:

Q. Well now, on those occasions, Witness, that the — what was this man's name?

Mr. Kresel.— Colwell.

Q. (Continuing.) Colwell brought you in any orders, did he give you any information as to who was his principal, for whose account it was for? A. He did not.

By Mr. Brackett:

Q. I do not now refer to this account 500; but at other times when he brought in orders did he give you such information? A. I don't know as he brought in any other orders except what is included in the 500 account.

Q. I understood you to say a few moments ago that he did hunt up business and bring in some orders? A. What I referred to was this account.

Q. And none other? A. No, sir.

Q. Did he never give any other orders to the firm, to your knowledge? A. He on several occasions attempted to get orders executed, but I do not believe that they ever were executed.

Q. Why? A. Well, owing to our inability to either buy or sell at the prices named.

Q. Did the question of having any margin ever enter into the equation of whether the orders were executed or not? A. Well, we would not have — I would not have executed an order for him without the necessary margin or the stock certificate, or some form of security.

Q. That is your universal custom? A. Yes, sir.

Q. Well, having executed the order, and Colwell having paid you the three payments, there came a time when delivery was to be made of the stock, did there not? A. There did.

Q. What do you recall with respect to that transaction? A. Why, I was telephoned to by Mr. Colwell from New York to deliver the securities, and the balance would be paid, and I notified Mr. Colwell to make the delivery. That is my recollection.

Q. Who was Mr. Coe? A. He is in our employ in the Yonkers office.

By the President:

Q. The same one who has been a witness here, as you understand it? A. Yes, sir.

By Mr. Brackett:

Q. Where were you when the telephone came to you? A. In the Yonkers office.

Q. Where was Colwell, or did he say he was? A. I have no means of knowing where.

Q. What did he say to you on the subject of delivery? A. He said that he was prepared to take up the stock.

Q. Well, what else? A. Pay for it, take the certificates.

Q. Go on. A. There is not anything else to say.

Q. Did he say he would be around somewhere to have delivery? A. Oh, of course, naturally.

Q. Go on.

The President.— Why don't you call his attention.

By the President:

Q. Did he say anything, where he would be ready to take it up? What office? You had two or three.

Mr. Brackett.— That is the precise question.

The President.— Put it so he understands it then.

The Witness.— He notified me where to make delivery of the certificate.

By Mr. Brackett:

Q. Where, what did he say? A. My recollection is he told me to deliver them in the Nassau Bank in Brooklyn. I think that is where the deliveries were made.

Q. State anything else that he said at that conversation? A. Well, he said he had the money to take up the certificates and to deliver them.

Q. Was he in the Brooklyn office at the time? A. Mr. Colwell?

Q. Yes. A. No, sir.

Q. Where was he? A. I don't know.

Q. Did he say why he wanted delivery at the Nassau Bank in Brooklyn? A. Why, it was for the reason —

By the President:

Q. No. Did he say anything? A. I don't know whether he said anything at that particular time.

By Mr. Brackett:

Q. Where was the certificate that you had thus purchased on his order at the time that he thus telephoned you? A. In the Brooklyn office.

Q. How had it gone to the Brooklyn office? A. It had been sent there.

Q. From where? A. From Harris & Fuller.

By the President:

Q. Did you receive deliveries of stock purchased by you in your New York office, do you? A. At that time we had our bookkeepers made our headquarters in Brooklyn, and the stock was delivered to the Brooklyn office.

By Mr. Brackett:

Q. When he thus telephoned you that he was ready for delivery and wanted it delivered at the Nassau bank, did you say that the stock was in the Brooklyn office? A. I must have, yes, sir.

Q. Did you suggest to him to go to the Brooklyn office and get the stock there and make payment? A. I did not make any suggestions.

Q. Let us see if you are sure about that. Where was Mr. Cole at the time? A. In Yonkers.

The President.— You have asked that twice and he said he couldn't tell. Oh, Mr. Coe, I beg your pardon. Where was Mr. Coe?

The Witness.— Mr. Coe was in Yonkers.

Q. There were clerks and cashiers and floor paraphernalia in the Brooklyn office, which was your main office at that time? A. Yes, sir.

Q. What did you do with respect to delivery? A. Sent Mr. Coe down and he got the certificates and delivered them to Colwell.

Q. Where did he get the certificates, did you understand? A. At the Brooklyn office.

Q. How far from Yonkers office? A matter of forty miles, isn't it? A. No.

Q. Twenty or thirty? A. Twenty miles I guess.

Q. Why did you send Mr. Coe down to the Brooklyn office to make delivery? A. For the same reason, that the account was opened under a number.

Q. No.

The President.— No. Give the reasons.

A. The account was opened under No. 500, and the delivery was made by Mr. Coe, all at the request of Mr. Colwell.

Q. Made when? When did he request it? A. When the account was opened.

Q. Did he say, when the account was opened, that he wanted delivery made to himself? A. There was nothing said about delivery at the time the account was opened.

Q. Get in your mind the point of my inquiry. A telephone comes to you in the Yonkers office that this man is ready to accept delivery and make payment and wants the stock? A. Yes, sir.

Q. And the stock was then in the Brooklyn office. Why did you send Mr. Coe from the Yonkers office down to Brooklyn to make delivery at the Nassau Bank? A. For the same reason that the account was opened under a number.

By the President:

Q. You don't understand. The point is this: Why didn't you send word to the Brooklyn office for them to make delivery, instead of your sending Coe down from Yonkers?

By Mr. Brackett:

Q. Or telephone back to Colwell to go to the Brooklyn office?

By the President:

Q. To go to the Brooklyn office and get it? A. Mr. Colwell had requested, at the time the account was opened, and it was understood that he did not care to have anybody connected with the firm except myself know who the business was done for.

By Mr. Brackett:

Q. And that is the reason you sent Coe down to make delivery? A. Exactly.

Q. What else did he say at the time the purchase was made? A. I don't know of anything else.

Q. You say he says who the business was done for. Whom did he say the business was done for? A. For himself.

Q. At the time of the order originally? A. No, sir. There was no question — the question did not enter into it at the time the purchase was made. There was a deposit made and that is all we required.

Q. You have said he said at the time of the purchase that he did not want anybody but yourself to know for whom the purchase was made? A. Meaning himself.

Q. I didn't ask you what he meant. I ask that that be stricken out.

The President.— Go along. Go to the exact point you want to bring out.

Q. Is that the reason you sent Coe to Brooklyn to deliver? A. Yes, sir; that is the reason.

Q. Well then, Mr. Coe knew about it besides yourself, didn't he? A. Mr. Coe knew about it, yes, sir, at that time.

Q. Will you tell any reason under heaven why you preferred that Mr. Coe, in addition to you, should know about the purchase by Colwell, rather than someone in the Brooklyn office? A. Yes. I believe he was not very much of a talker.

Q. And are all the other employees in your office talkers? A. No, sir. They were younger —

By the President:

Q. When you say he was not much of a talker, you mean to say he would keep the transaction to himself? A. That is it exactly.

By Mr. Brackett:

Q. When was Mr. Coe first told that Mr. Colwell was the man who gave the order for the purchase of the account of 500? A. I didn't hear you.

Q. When did Mr. Coe first know that Colwell was the man who opened the account 500? A. You will have to ask Mr. Coe. I don't know.

Q. Did he at the time the account was opened, to your knowledge? A. You will have to ask Mr. Coe. I cannot answer.

Q. You don't know? A. I don't know.

Q. Did Mr. Coe know about the fact that Colwell was the proprietor of the account 500 before the day that you sent him from Yonkers to Brooklyn to make delivery? A. I cannot answer.

Q. You don't know? A. No, sir.

The President.— Does it appear in the evidence that the account bore the name of William Sulzer as well as the figure 500?

Mr. Brackett.— No; that is the other one. This is Fuller & Gray. That does not bear the name William Sulzer. The other was Harris & Fuller, that you have in mind.

Q. How did the account come to be designated 500? A. At the request of Mr. Colwell.

By the President:

Q. Did he pick out the number and say "Call it 500?" Or did he say — A. No, I —

Q. That is the point. A. I think I gave it the number.

By Mr. Brackett:

Q. You selected the number? A. Yes, sir.

Q. But how did you come to take the number instead of a name? A. At the request of Mr. Colwell.

Q. What did he say? A. He did not want his transactions with the firm known, and we gave the account a number for that reason.

Q. Did he tell you any reason why he did not want his transactions with the firm known? A. The reason is very plain, because of his former connection with Harris & Fuller.

Q. How long prior to this time had he been connected with Harris & Fuller? A. I cannot answer that; I don't know.

Q. Some years, had it not? A. Several years.

Q. Five years or more? A. I don't know how long.

Q. Had he been connected with the firm of Harris & Fuller from the time that you knew him? A. He had had desk room there.

Q. He had been connected with the firm? A. No.

Q. That was three years back? A. Yes.

Q. What was said when the relation between you and him — he as your private secretary ceased? A. Well, I did not — thought there was not enough for him to do and what he did was not satisfactory.

Q. That was the reason that the relation stopped? You stopped it? A. Yes.

Q. Have you now stated every reason why delivery to be made in Brooklyn was not made in the office of the firm, rather than at the Nassau Bank? A. Every reason that I know.

Q. And every reason why Mr. Coe went down to make the delivery instead of some employee or member of the firm in Brooklyn making it? A. Yes, sir.

Q. Do you know how far the Nassau Bank is from the office of the firm, or was in October? The office of the firm in Temple Bar? A. Yes, sir.

Q. About how far? A. A block. Around the corner.

Q. Did you make any contribution to the Sulzer campaign? A. I did.

Q. How much? A. I can't remember whether it was $50 or $100.

Q. Given to whom? A. William Sulzer.

Q. When? A. Why, I mailed him a check.

Q. Where, to where did you mail it? A. I will have to correct that. I remember differently. I gave the check to Mr. Colwell.

Q. When?

Judge Werner.— I didn't hear that.

Mr. Brackett.— Gave the check to Mr. Colwell.

Q. The check was made payable how? A. William Sulzer.

Q. Where was Colwell at the time? A. In the Yonkers office.

Q. And about when was it? A. Just previous to election.

Q. Between the 25th of October and the 5th of November? A. I believe so.

Q. Why did you give it to Mr. Colwell? A. He asked for a contribution.

Q. What did he say when he asked you?

Mr. Hinman.— I object to it on the ground it is incompetent, irrelevant, immaterial and hearsay.

The President.— Objection sustained.

Mr. Brackett.— Wouldn't it be competent if the defendant adopted it by accepting the $50?

The President.— But he might repudiate it and keep the money.

Q. Did your check come back indorsed by William Sulzer?

Mr. Hinman.— That is objected to, as to how it was indorsed, if the check can be produced.

Q. Did your check come back as a canceled voucher?

By the President:

Q. Was your check paid through the bank and did it come back to you? A. Why, yes, it was.

By Mr. Brackett:

Q. Delivery having been made of those 100 shares of stock, delivery of $8,800 that was deposited where? Those proceeds, they were deposited in the Nassau Bank? A. (No response.)

Q. Was this check of $60 gotten after the 500 account had been opened? A. I don't know. I cannot remember.

Q. Sutton was an employe of your office, wasn't he? A. Yes, sir.

Q. In which office did he enter service? A. Brooklyn.

Q. Did you have any conversation with him as to the christening of this account? A. None whatsoever.

Q. You swear to that positively? A. Positively.

Q. The account having been opened, and this transaction having occurred by which the 100 shares were purchased and paid for in installments, and finally delivered on the payment of the

final installment, came there a time when there was another transaction? A. Yes, sir.

Q. When? A. Bought 100 Big Four on November 4th.

Q. Upon whose order was that purchased? A. Mr. Colwell's.

Q. Was there at that time anything in the account in the way of deposit or margins? A. No, sir.

Q. Where was the conversation when Colwell gave you the order? A. He might have —

Q. I want your recollection? A. I don't know.

Q. Well, the Yonkers office? A. He might have telephoned it. I cannot remember.

Q. What was said about it? A. Quoted the stock and gave me an order at a price.

Q. What did he say? A. I don't remember the detail of the conversation.

Q. As near as you can remember? A. Simply asked for a quotation on Big Four and, when I furnished him with a quotation, he gave me an order to buy 100 at a certain price.

Q. Was there anything on deposit? A. There was nothing.

Q. Was there any other conversation at that time? A. Yes, sir; there was.

By the President:

Q. Did he say whether you were to carry the stock for him, or he would take it up, or anything of that kind? A. I wanted to know about the money, and he said it would be paid for when ready to deliver.

The President.— Very well.

By Mr. Brackett:

Q. What else was said? A. When?

Q. At that time?

The President.— Call his attention to what you want.

By Mr. Brackett:

Q. Did he tell you at that time it was for William Sulzer? A. He said the account was for William Sulzer.

Q. Now, was that purchase made on the 4th of November, for the same account 500 that the previous purchase had been?

The President.— That is a matter of conclusion, of course.

Mr. Brackett.— Well, it entered right into the same account.

The President.— You can argue from that that it was.

Mr. Hinman.— If I may inquire, if the stenographer will read the second last question and answer — my attention was diverted for the moment.

(The stenographer thereupon read the question referred to as follows: "Q. Now, was that purchase made on the 4th of November for the same account 500 that the previous purchase had been").

The President.— That was excluded.

Q. Was there any other item in this account during the time that it remained on your book? A. There is a bond sale.

Q. What, of what? A. St. Louis Southwestern 4's.

Q. When? A. November 25.

Q. Where was the — was the bond delivered to you to sell? A. The bond was delivered to me.

Q. By whom? A. Mr. Colwell.

Q. Did he say for whom it was? A. He said it was for a woman client.

Q. Did he give you the name? A. I think he mentioned the name at the time, yes, sir.

Q. Who did he say? A. I can't remember.

Q. Was it sold? A. It was sold.

Q. Why was it put in the account 500? A. Mr. Colwell's business is put in that account.

Q. How was it paid for? After it had been sold, how did the firm pay for it? A. The check was drawn to my order and I gave Mr. Colwell my check.

Q. Why that way? A. The same reason, that the account was opened under this number, and as I have explained before.

The President.— That doesn't tell anything. Do you mean because he wanted it kept secret?

The Witness.— He did not want to be identified with the account.

The President.— That is it.

Q. How would there be any identification by giving the check of Fuller & Gray that would not be an identification by giving the check of John Boyd Gray?

The President.— Well, doesn't that appear, it would be on his principal. That would appear, but not on the firm's books or checks.

Mr. Brackett.— That is true, but as identifying Colwell, as dealing with this firm it would be just as potential, it seems to me.

The President.— The books of the firm would not be.

Mr. Brackett.— They carefully did put it right into the books of the firm, the bond account.

The President.— No, there was no name on that at all.

Mr. Hinman.— There was no name on it, your Honor is correct; there was no name; it was known as 500.

Mr. Brackett.— You may ask him.

Cross-examination by Mr. Hinman:

Q. Mr. Gray, where have you been during the past two weeks? A. Attending to my business.

Q. Whereabouts? A. At different offices.

Q. Well, by different offices, do you mean these offices that you have named here this morning? A. Yes, sir.

Q. Have you been at your places of business, or one or more of them, each business day during the last two weeks? A. I have.

Q. Where do you live? A. Haddon Hall, Riverside Drive and 137th street.

Q. Have you been at your home during the past two weeks, during portions of each day? A. No, sir, not at that address.

Q. Not at that address? A. My home has been closed for the summer.

Q. Oh, yes. Now, you say your main office at the present time is in the city of New York? A. Yes.

Q. In 1912, October, where was your office? A. Brooklyn.

Q. You have stated, in answer to Senator Brackett's question, that one of the members of your firm, Mr. Fuller, is a member of the Stock Exchange. Was he a member in 1912? A. Yes, sir.

Q. In October, 1912, where did you do your clearing? A. Our stocks were cleared by Harris & Fuller.

Q. And is Arthur Fuller a brother of the Melville Fuller who is a member of the firm of Harris & Fuller? A. Yes, sir.

Q. What do you mean by clearing your stocks through Harris & Fuller? A. Well, they cleared them for us and carried them for us.

Q. So that, if you made a purchase of stock for a customer, you would obtain the shares or certificates of stock through the firm of Harris & Fuller? A. Yes, sir.

Q. And that was true, was it not, in October, 1912? A. Yes, sir.

Q. During October, 1912, do you know what the relations between Mr. Colwell and your partner, Arthur Fuller, were? A. What their —

Q. (Interrupting) October, 1912? A. They were not friendly. Do you mean that?

Q. Yes, sir. A. Yes, sir.

Q. Do you mean by that they were not friendly, the relations between them, the two men, at that time? A. No, sir, they were not.

Q. So far as buying and selling stocks was concerned, Mr. Colwell, and the firm of Fuller & Gray, was the first transaction this one of October 21, 1912, which appears on this transcript? A. That is my belief.

Q. At the time when that account was opened, did Mr. Colwell say anything to you as to anyone being interested in that account other than himself? A. No, sir.

Q. So that account, I take it, was opened — by your firm for Mr. Colwell, but at his request, under a number? A. Yes, sir.

Q. Mr. Colwell had formerly been, had he not, a member of the firm of Harris & Fuller of New York? A. Yes, sir

Q. Did he state, or did you know it to be a fact, that he did not desire the clerks in your office, Brooklyn office, or any other office — A. Yes.

Q. (Continuing) General clerks, to know that he was having dealings with your firm? A. I did.

Q. And was that the reason why this account was opened so that his name should not appear thereon? A. It was.

Q. How many bank accounts was your firm keeping in October, 1912? How many bank accounts did it have? A. Four.

Q. What is your recollection as to whether or not the $2,500 paid in on this account, October 22, 1912, to your firm, was in one payment, that is, the item of $1,500 and the item of $1,000? A. I didn't catch the question.

Q. On October 22, $2,500 was paid by Mr. Colwell to your firm, was it not? A. Yes, sir.

Q. Was that payment paid in one sum when made, and did you then divide it so as to send a part of the currency to your Brooklyn office, and deposit a part of it in your Yonkers bank? A. I don't know.

Q. You have no recollection? A. No, sir.

Q. But so far as you now know that payment may have been made, that sum of $2,500 may have been made in one payment, and your — and you may have divided it so as to send part of each to two banks? A. It might have been in one payment, but I think it is unlikely.

Q. Now, on the 31st of October, 1912, the delivery of these 200 shares of Big Four stock was made, was it not? A. Yes, sir.

Q. What is your recollection as to where you were when you received word that Mr. Colwell was ready to have delivery of that stock made? A. Yonkers.

Q. That is, you were in your Yonkers office? A. I believe I have testified to that before.

Q. And your recollection is that the communication came to you from Mr. Colwell over the telephone? A. Yes, sir.

Q. What is your recollection as to whether it was your suggestion, or Mr. Colwell's suggestion that Mr. Coe had anything to do with that delivery? A. That was my — Mr. Colwell made no suggestion as to who should deliver the stock.

Q. What is your recollection now as to whether or not it was your suggestion or Mr. Colwell's as to the place where the stock should be delivered? A. I think I suggested the place.

Q. What was the name of the bank in which Fuller & Gray carried its account in Brooklyn at that time? A. A trust company and a bank; the Home Trust Company and the Nassau National Bank.

The President.— We will suspend now. Crier, adjourn court.

The Crier.— Hear ye, hear ye, hear ye, this Court will now take a recess until 2 o'clock this afternoon.

Thereupon, at 12:30 o'clock p. m., a recess was taken until 2 p. m.

AFTERNOON SESSION.

The Crier.— Judges of the Court of Impeachment.

The President.— Call the roll.

The Clerk thereupon called the roll and found a quorum present with the following absentees:

Senator Fitzgerald.
Judge Gray.

The Crier.— Hear ye, hear ye, hear ye, this Court now resumes its session from recess.

JOHN BOYD GRAY resumes the stand.

Cross-examination continued by Mr. Hinman:

Q. Where did you instruct Mr. Coe to go and make this delivery of the 200 shares of Big Four stock in October, 1912? A. Yonkers office.

Q. If you will get the question; where did you instruct Mr. Coe to make delivery of this 200 shares of stock? A. Nassau National Bank.

Q. Where was Mr. Coe when you gave him those directions? A. Yonkers office.

Q. There with you? A. I believe so.

The President.— Keep your voice up.

The Witness.— Yes, sir.

Q. Have you any present recollection about the delivery of the 100 shares on November 6th of Big Four stock, and what instructions or directions, if any, you gave in reference to that? A. I believe I gave the same instructions.

Q. And to whom did you give those instructions? A. Mr. Coe.

Q. Have you any personal knowledge regarding that 100 shares of stock or who it was for, aside from Mr. Colwell's statement to you which you have testified concerning? A. I have not.

Q. Where were you when this bond to which you have referred and for which you gave your check, was delivered to you? A. I don't remember.

Q. Have you any means now of fixing the name of the woman or giving us the name of the woman who was reported to you as the owner of this bond? A. I cannot fix the name.

Q. You have stated that you gave a check for $50 to Mr. Colwell in connection with Mr. Sulzer. Have you that check with you? A. I have not.

Q. Have you any recollection now, present recollection, as to that check having been returned to you as a canceled voucher, and the indorsement thereon? A. I don't know anything about the indorsements.

Q. Was this bond that is referred to in this Exhibit 72, which is a transcript of account No. 500, a registered bond? A. It was not.

Q. Where did you obtain the 100 shares that was — that were delivered to Mr. Colwell on November 6, 1912, or where were they obtained? A. The same place as the other 200.

Q. Have you any recollection now as to whose name those shares of stock stood in when you received them from Harris & Fuller and when they were delivered? A. I have not.

Q. Have you any data that will give the number of the certificate of shares of that stock? A. Our receipt book will show that.

Q. Have you the receipt book with you? A. I believe so.

Q. Will you look at the receipt book and give us the number of that certificate?

Mr. Kresel.— May I call the counsel's attention to the fact that the receipts given by Mr. Coe —

Mr. Hinman.— I know that.

Mr. Kresel.— That the receipts given by Mr. Coe are already in evidence, and they give the numbers.

Mr. Hinman.— One of the receipts gave it but I thought the other one did not.

Mr. Kresel.— No, they both give it.

Mr. Hinman.— I was in error about that.

The President.— Just give the number or show the Senator the receipt and then he will see it.

Mr. Hinman.— I knew that the number was on one but I thought on the other it was not.

Mr. Kresel passes paper to Mr. Hinman.

Mr. Hinman.— Pardon me just a moment. (Examines paper.)

Q. Let me inquire whether you have any personal knowledge as to whether that 100 shares of stock delivered on the 6th day of November, 1912, whether it was in one or more certificates, that is of your own personal knowledge? A. My own personal — I can't answer.

Mr. Hinman.— Nothing further.

By Mr. Brackett:

Q. Where were you when Colwell suggested that you give $50 to the campaign fund?

Mr. Hinman.— That is objected to, the form of the question is objected to, on the ground that it is not competent and calls for a conclusion.

The President.— Sustained.

Q. Give a subscription of $50 then? A. Yonkers office.

Q. Did he give any reason why you should give such a subscription? A. I think he did.

Q. What was it?

Mr. Hinman.— Objected to on the ground it is incompetent and hearsay.

The President.— Objection overruled.

The Witness.— It might mean some business.

Q. Is that all you remember of it? A. That is all.

Q. Did he say that inasmuch as the candidate was doing some business there you ought to give a subscription?

Mr. Herrick.— Wait a minute. That is objected to on the ground that it is leading, suggesting the answer.

The President.— That is —

Mr. Brackett.— I exhausted him first.

The President.— Did he say anything on that subject?

The Witness.— No.

Q. Had you ever given a subscription for a political purpose before? A. Yes.

Q. To a State candidate? A. I believe so.

Q. How many times? A. Oh, on several occasions.

Q. To persons who had been doing business with you? A. No, not necessarily.

Q. Irrespective of that? A. Yes.

Mr. Brackett.— That is all.

The President.— That is all, witness.

Senator Griffin.— Mr. President.

The President.— Senator Griffin.

Senator Griffin.— I would like to ask the witness several questions.

By Senator Griffin:

Q. Mr. Gray, in return for the desk room in your office did Colwell render you or your firm any services? A. He did not.

Q. When Colwell went away did he remove his desk or its contents from your office? A. He did not.

Q. Are they there still? A. The desk is the property of the firm and the papers in it I forwarded to his residence.

Q. Where? A. 790 North Broadway, Yonkers.

Q. When did you do that? A. Recently.

Q. How recently? A. Oh, within two or three weeks.

Q. That is as near as you can come to it? A. Yes.

Q. Did you get any acknowledgment from Colwell that he had received those papers and documents? A. I do not know what became of the receipt. It was sent by parcel —

The President.— No. He asks did you get any acknowledgment?

The Witness.— I did not get any.

Q. Do you know whether he received them or not? A. I do not.

Q. When did Colwell's employment by you as secretary begin and end, as near as you can recollect? A. Previous to the 1st of October, 1912. About six or eight months he was in my employ.

Q. Then he was not employed by you as private secretary after October 1, 1912? A. That is my recollection.

Q. And at the time that he opened this account 500 with your firm he was not employed by you as secretary? A. That is my recollection.

Q. But he still had desk room in your office? A. Yes, he did.

Q. Is Mr. Colwell a man of means? A. I did not understand so, no.

Q. When he opened this account 500, did he disclose to you the name of his principal? A. He did not.

Q. You did not believe at that time that he was opening that account for his own benefit?

Mr. Hinman.— Objected to on the ground that it is incompetent.

The President.— Why, you can ask him —

Mr. Hinman.— With pardon to the Court.

The President.— Because he may follow that up by asking what he said. Answer the question. Did you believe that?

The Witness.— Did I believe?

The President.— That he was opening it himself.

The Witness.— No, I did not.

The President.— Now you can ask him whether he told anything.

Q. Did he inform you? A. He did not.

Q. Did he inform you at any time for whom the account was opened? A. I testified to that effect.

The President.— What did you testify? Repeat it, witness.

The Witness.— I testified at the time the third 100 shares of Big Four, the order was given, that there was no money deposited and that he told me that the account was for William Sulzer.

By Senator Griffin:

Q. You are what is called the office man of your firm, are you not? A. I am.

Q. Did you have charge of all the three offices of your firm? A. Charge of the entire business outside the floor.

Q. That is, you superintended the opening of books and the conduct of the books? A. In a general way.

Q. Did your firm have many accounts designated by numbers, instead of by the name of investors? A. Several.

Q. How many? A. Several; I could not say how many.

Q. Can't you state approximately how many? A. Oh, there might have been half a dozen.

Q. Did you keep any index or cross reference book by which the identity of those numbered accounts could be disclosed? A. We did not.

Q. How would you know the identity of the investors? A. I knew them personally and in some cases my cashier knew them.

Senator Sage.— May I ask a question, Mr. President?

The President.—Yes.

By Senator Sage:

Q. Mr. Gray, I understand you to testify that when these first 200 shares were delivered, you do not know in whose name the certificates were made? A. I did not know what?

Q. In whose names the certificates were made? A. No, I did not.

Q. You have not any recollection of whether they were made in anybody's name, or whether they were merely in the name of your firm? A. That is a detail of the business that would not make any difference whose name it was in, unless it was a stock paying a dividend.

Q. Well, isn't it a fact that when you sell stocks and they are entirely paid for and delivered, that it was the custom that those stocks would stand in the name of the party to whom they are delivered? A. If it is a nondividend paying stock, and a customer asked to have it transferred to his name, we do it; otherwise usually we will deliver a street certificate just as we receive it.

Q. That is your custom when the amount is entirely paid and the stock is delivered? A. Yes, sir, that would be the general custom; sometimes we might transfer it.

Senator Healy.— I would like to ask the witness a question.

By Senator Healy:

Q. First, Mr. Gray, is one of the members of your concern a member of the New York Stock Exchange? A. Yes, sir.

Q. Are you familiar with the rules of the New York Stock Exchange? A. Fairly so.

Q. Can you advise the court as to any rule that exists regarding the division of commissions or the hiring of people to sell bonds or stocks? A. We are not allowed to divide commissions.

Q. I did not get that? A. We are not allowed to divide commissions.

Q. Then, if Mr. Colwell was in your employ and you know-

ingly divided commissions with him, or he divided with you, on any transactions, or that you paid him money in any form for soliciting business for you, would that be against your interests as a member of the Stock Exchange? A. He was not — I have testified he was not in our employ, and didn't receive any salary.

Q. That is not my question. I am asking you if that is not the fact? A. That he was not in our employ?

Q. That is not my question.

The President.— Just repeat that. Did you ask him whether he did divide commissions, or agree to divide, is that the question?

Senator Healy.— My question is this: Had the concern represented by Mr. Gray employed Mr. Colwell or divided commissions of any character with Mr. Colwell, if that would not be against the best interests of his concern?

The President.—Yes.

The Witness.— It certainly would be against the best interests of the concern.

Senator Brown.— Mr. President.

The President.— Senator Brown.

By Senator Brown:

Q. Have you avoided service of process for the purpose of avoiding an appearance here? A. I have not.

Q. Have you been requested to not appear here if you could avoid it? A. I have not.

Q. Have you had any communication from Governor Sulzer, or any other person, about not appearing? A. I have not.

Senator Pollock.— Mr. President.

The President.— Senator Pollock.

By Senator Pollock:

Q. When did you first learn that your appearance in this court was desired? A. Oh, I heard of it indirectly several days ago.

Q. Through whom? A. Why, through several sources, I guess.

Q. Did you receive any communication from the Managers of Impeachment, or their counsel? A. I did not.

Q. From what sources did you receive this information? A. Why, I couldn't say definitely; from several sources.

Q. Well, mention one? A. Why, I had a telephone from employees of our different offices, that they wanted me.

Q. When you say "they," whom do you mean? A. The Impeachment Managers, or whoever is in charge of this trial.

Q. When did you receive this information? A. Several days ago.

Q. Last week? A. It must — yes, last week.

Q. And upon receiving that information, what did you do? A. Attended to my regular business.

Q. Did you receive any information from anyone else than an employee of Fuller & Gray? A. Yes.

Q. Who was it? A. It is my belief — let's see — Judge Bell.

Q. When did you receive the communication from him? A. Yesterday.

Q. At what time? A. I think it was about eleven o'clock.

Q. In the morning? A. Yes.

Q. Who else? A. I can't remember anybody else.

Mr. Kresel.— I call Col. Barthman.

The Clerk.— You do solemnly swear that the evidence which you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer, as Governor of this State, shall be the truth, the whole truth and nothing but the truth, so help you God.

Mr. Barthman.— I do.

The Clerk.— What is your full name, please?

Mr. Barthman.— Henry C. Barthman.

HENRY C. BARTHMAN, a witness called on behalf of the Managers, having been first duly sworn, in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Kresel:

Q. Mr. Barthman, are you Colonel of the 47th Regiment of Infantry? A. Yes, sir.

Q. Of the Militia of the State of New York? A. Yes, sir.

Q. And other than that what is your business? A. Jeweler.

Mr. Stanchfield.— Speak up, Colonel, so they can hear you.

Q. On the 10th of October, 1912, did you know Governor Sulzer, who was then a candidate for Governor? A. Yes, sir.

Q. Did you on that day write him a letter? A. My business did, my concern did.

Q. Your firm did? A. Of which I am a partner.

Q. Are you a member of the firm? A. Yes, sir.

Q. And what is the name of the firm? A. William Barthman.

Q. And who are the other members of the firm? A. My father, brother and myself.

Mr. Kresel.— I suppose, gentlemen, you haven't got the original?

Mr. Herrick.— No.

Q. Is that a copy of the letter which was written to candidate Sulzer (counsel passes paper to witness)? A. (After examining) Yes, sir.

Mr. Kresel.— May I read it?

The President.—Yes, if there is no objection.

Mr. Kresel.—(Reading):

"*October* 10, 1912.

"*Hon. William Sulzer,* 115 *Broadway, City:*

"My dear Congressman.— My sons join me in sending you this small contribution towards the expenses of your personal campaign, at the same time extending to you our earnest wishes that you will be the next Governor of our State, as this office is certainly in need of a man of your caliber.

"Yours very truly."

Q. Was a check inclosed with that letter? A. Yes, sir.

Q. Now, I show you this check, and ask you whether that is the check that went with it (counsel passes paper to witness). A. (After examining) Yes, sir.

Mr. Kresel.— Mark that letter.

(The letter offered in evidence was received and marked Exhibit M-125.)

Mr. Kresel.— I offer the check in evidence.

(The check offered was received and marked Exhibit M-126.)

Mr. Herrick.— Just let me see that, will you, Mr. Kresel, a moment?

(Counsel passes Exhibit 126 to Mr. Herrick.)

Mr. Kresel.— The check has the imprint "William Barthman, 174 Broadway." It is No. 14327.

"New York, *October* 10, 1912.

"THE LIBERTY NATIONAL BANK.

"Pay to the order of William Sulzer, fifty dollars.

"(Signed) William Barthman."

Indorsed: William Sulzer, L. A. Sarecky, and deposited in the Mutual Alliance Trust Company.

Q. Did you receive a copy of that —

Mr. Herrick.—(Interrupting) One moment. Will you concede that that is in the statement filed?

The President.—What is that?

Mr. Herrick.— I asked if it would be conceded that that is in the statement filed, included in the statement.

Mr. Kresel.— It is news to me if it was. I haven't seen it.

Mr. Herrick.— It is in the statement.

Mr. Kresel.— If it is, of course it will be conceded.

Mr. Kresel.— I find it in the statement under date of October 10th.

Q. Did you receive an acknowledgment of that contribution? A. Yes, sir.

Q. I show you this letter. Is that the acknowledgment?

Mr. Herrick.— Wait. This is entirely harmless, but how is it material? This is not something that he did not account for. This is something that he did.

Mr. Kresel.— But I want to get the letter in evidence because that is important.

The President.— If that is the only materiality there may be some statement in the letter.

Mr. Stanchfield.— The letter that was transmitted to the Governor states that this was a contribution to his personal campaign.

Q. Is that the letter? A. Yes, sir.

Mr. Kresel.— I offer it in evidence.

(Letter offered in evidence is received and marked Exhibit M-127.)

Mr. Kresel.— This letter is written on the stationery of the Committee on Foreign Affairs and reads as follows:

"New York, *October* 14, 1913.

"Col. William Barthman, 174 *Broadway, New York City:*

"My dear Colonel.— Many thanks for your kind letter of congratulation. I certainly appreciate all that you say and all that you have done. You are a good friend of mine and can help me very much during the campaign. You know just what to do and how to do it and a word to the wise is sufficient. With best wishes, believe me,

"Sincerely your friend,

"William Sulzer."

Mr. Herrick.— No cross-examination.

Mr. Stanchfield.— The Managers rest, if the Presiding Judge please.

Managers rest.

The President.— Counsel for the defense.

Mr. Herrick.— May it please the Court: We were informed last night by one of the counsel for the Managers that they would probably conclude their case to-day, occupying they thought about an hour. That took us somewhat by surprise as we supposed it would last until to-morrow.

There are some motions that we desire to make in this case. There is a motion to be prepared, consultations to be had, where the respondent is entitled to the benefit of all his counsel. Mr. Marshall will not be here to-morrow. He has gone now to observe a religious holiday that is very sacred to him. A witness who will be one of the earlier witnesses in the case is also of the same faith and he observes two days.

My associate, upon whom will devolve the labor of opening this case, is very nearly an exhausted man. We don't want to delay these proceedings unnecessarily. We are just as anxious to get through as any member of this Court can possibly be, but we think in justice to the respondent and in justice to some of the counsel at least that we ought to be granted a liberal adjournment.

You take Friday. You would have but a portion of the day then. There are some questions that I understand some of the members of this Court desire to investigate before they decide upon them, and it seems to me that the interests of all parties require that we should have a recess until at least Monday. We cannot go on to-morrow with all our counsel present. If we attempted to do it I am afraid another one will absolutely break down.

The President.— Gentlemen, the Presiding Judge is not disposed to dispose of this motion because it involves the question of convenience not only to the counsel but to the Court, which he prefers the other members of the Court should settle for themselves. He hopes that someone will move —

Senator Brown.— I move that the Court take a recess so that the members of the Court may have an opportunity to confer with one another. It is suggested I move we go into Executive Session and I make that motion.

The President.— Seconded.

Mr. Herrick.— There is one thing more, may I be permitted to say?

The President.— Yes.

Mr. Herrick.— I realize this is a very tedious performance to all the members of the Court, but to those who have been practising lawyers, they must recognize the fact that while it is tedious to them it is very laborious and exhausting to counsel in the case and we are entitled, I think, to some consideration.

The President.— The motion is that of Senator Brown, that the Court be cleared for consultation.

Motion put and carried.

The Court having been cleared for consultation, it was decided to adjourn until 2 o'clock to-morrow.

The public session was thereupon resumed.

The President.— The Court has decided to adjourn until to-morrow at 2 o'clock. It thinks that at that time all the preliminary motions should be made and disposed of.

Mr. Herrick.— Can your Honor at this time give us any intimation as to whether we will be compelled to go on to-morrow after the preliminary motions that you speak of are disposed of. It is a matter of the gravest importance to us. This has placed us in an exceedingly embarrassing position for the defense.

The President.—We will deal with that when the occasion arises to-morrow.

Mr. Herrick.— I did not know but what I might get some intimation as to what we might expect.

The President.— If there is nothing further to be done, crier, adjourn until to-morrow at 2 o'clock.

The Crier.— Hear ye, hear ye, hear ye, all persons having any further business before this Court of Impeachment held in and for the State of New York may depart hence and appear here to-morrow afternoon at 2 o'clock, to which time this Court now stands adjourned.

Whereupon at 3:27 P. M. the Court adjourned to meet again on Thursday, October 2, 1913, at 2 P. M.

SENATE CHAMBER,

ALBANY, N. Y., *October* 2, 1913.

Pursuant to adjournment the Court convened at 2 o'clock P. M.

PRESENT:

Hon. EDGAR M. CULLEN, Presiding Judge,
and
THE JUDGES OF THE COURT OF APPEALS,
and
THE SENATORS OF THE STATE OF NEW YORK.

APPEARANCES:

THE MANAGERS:
Same as heretofore.

Counsel for the Managers:
Same as heretofore.

Counsel for the Respondent:
Same as heretofore.

The President.— Call the roll.

The roll call showed a quorum present with the following absentees:

Senator Bussey.
Senator Fitzgerald.
Judge Gray.
Senator Sullivan.

The President.— Crier, open court.

The Crier.— Hear ye, hear ye, hear ye, all persons having any business before this Court of Impeachment held in and for the State of New York, may now draw near, give their attendance and they will be heard.

The President.— Mr. Kresel.

Mr. Kresel.— May it please the Court. May I occupy a minute or two to make a statement to the Court with reference to the blotter entry in the Harris & Fuller books. On behalf of the Board of Managers we desire to make the following statement with reference to an entry under date of December 30, 1912, appearing in the blotter of Messrs. Harris & Fuller in connection with the account of the respondent William Sulzer.

Since Mr. Fuller testified, counsel for the Managers and experts employed by them have had submitted to them various books and papers of the firm of Harris & Fuller. A careful examination has been made of the same and of the entry in question and of corresponding entries referring to the same item and made in other books of Harris & Fuller.

From such examination the Managers are convinced that the entry in the blotter was made in the regular course of business of the firm of Harris & Fuller on the 30th day of December, 1912, notwithstanding the difference in handwriting appearing in said entry and the position of the entry at the bottom of the page.

The erasures appearing on the page in the blotter containing said entry have been satisfactorily explained as erasures of totals written in lead pencil in the regular course of bookkeeping before the entry in the question was made on such page.

The Board of Managers are glad to make this explanation publicly in order to remove any misconception that may have been created concerning the correctness of the entry by the request of counsel made to the Court, that the blotter in question be submitted for examination by experts.

Mr. Herrick.— Mr. President, and may it please the Court: We desire to have an amendment made to the answer. If you will turn to page 464, the tenth line from the top,—

The President.— One moment, till I find it, Mr. Herrick, if you please. 464?

Mr. Herrick.— 464, the tenth line.

I wish to strike out the words "received and;" the tenth line from the top, page 464. It was put in by inadvertence of counsel.

The President.— Any objection?

Mr. Parker.— None.

The President.— So amended.

Mr. Fox.— May it please your Honor and may it please the Court: We beg to submit some motions, first, to strike out certain testimony —

The President.— Mr. Fox, I think you better come up here, they hear it better. The other members of the Court hear your argument better than in any other position.

Mr. Fox.— I will have to gather up a few things which I did not expect to take up there. I think I have what I need.

The President.— You will have the assistance of the crier, if you wish.

Mr. Fox.— The first testimony to which I address the attention of the Court, appears on page 1028, very near the bottom of the page. Counsel for the Managers was reading from the testimony given by Mr. Sarecky before the Frawley Committee. We objected to some of it, and then certain suggestions were made so we abated our objections, and now, in view of the way the testimony is left, I move to strike out, first, specifically, the question and answer:

> "Q. Did you have any talk with Governor Sulzer about that? A. I asked him for the place."

While, of course, may it please your Honor, that is only equivalent to the stenographer saying that "I heard Mr. Sarecky say that he asked the Governor for the place," and is, of course, hearsay.

Mr. Stanchfield.— When he —

The President.— We better dispose of these as we go along.

Mr. Fox.— I think so.

The President— Otherwise, all of us may forget.

Mr. Fox.— Yes.

Now, in that connection, not only is that hearsay, but the

Managers have left the case in regard to the allegations touching Mr. Sarecky unsupported by any evidence that connects the Governor with him at all. I mean any of the allegations in any article of impeachment.

Now, perhaps before I put the motion, as this matter may involve other rulings, it would be well for me to read to the Court for the moment what the — I think these articles begin at page 59; yes, they do; and the first one which touches Sarecky appears on page 64 of the printed record.

Article 3. And that is that the respondent in the months of July and August, 1913, fraudulently induced one Louis A. Sarecky, omitting the other names for the present, to withhold true testimony from said Committee, which testimony it was the duty of the said several persons to give. That is Article 3.

Article 4, page 64, the second line from the bottom, and the last, is an allegation that the respondent practiced deceit and fraud and used threats and menaces with intent to prevent said Committee and the people of the State from procuring the attendance and testimony of certain witnesses, repeating their names, and including Louis A. Sarecky, with the intent to prevent said persons named and all other persons severally, they or many of them having in their possession certain books and other things, which might or would be evidence in the proceedings before said Committee, and to prevent such persons named severally from producing or disclosing the same. That is a summary.

Now, the only evidence that is produced here in regard to Mr. Sarecky was his own declaration before the Frawley Committee. Certainly it does not need argument to show that because a stenographer or anyone else heard Mr. Sarecky say that he, Sarecky, had asked for an appointment is hearsay. The only evidence in the case that touches the respondent at all is the fact that the State Hospital Commission, as it lawfully might, and acting, as we must presume in the absence of evidence, I take it, from proper motives, made an application to another commission or board of the State to take a certain office out of the one class in regard to civil service and put it in another. The application first was to suspend, as I understand it, the rules. I am speaking from recollection, to save time, in the case of L. A. Sarecky. The action finally taken

was not a personal matter at all, but related to the office. That is all the evidence that I recall. When I say all the evidence, I mean to include all the evidence that was taken on the subject that in any way connects the respondent with any act on the part of this Commission or Louis A. Sarecky. Now, we are not trying a civil cause. Every authority which has been cited to your Honors has held the principle that the rules which apply in criminal actions apply here, but you cannot convict this respondent or proceed to the question of voting upon his guilt or innocence upon mere surmise or suspicion or guess.

We are entitled not only in all fairness, I submit, but under the rules of law to have hearsay evidence excluded. Nay, particularly is that so, it seems to me in a court more than one-third of whose members I am told are laymen from the standpoint of the law.

Now I call your attention to another bit of evidence on page 1062.

The President.— Is that connected with this?

Mr. Fox.— Well, it is connected with it.

The President.— I would rather dispose of each separately.

Mr. Fox.— Well, perhaps we had better not. Without taking up any further time I submit that on well settled rules of evidence and procedure we are entitled to have that evidence stricken out, indeed, all the evidence of Sarecky, because of the failure of the Managers to proceed to the point which the law requires them to reach on that subject.

The President.— Now, Mr. Stanchfield, the only point I wish to hear you on is the admissibility of that question. I do not think it is right that the Court should pass on the probative force of any evidence that is competent. That is part of the final submission of the case. But how is that competent? That is the only point I wish to hear.

Mr. Stanchfield.— Just a moment, if the Presiding Judge please.

The objection primarily of the Board of Managers is to the

effect that the motion to strike out that testimony comes too late; that counsel for the respondent have been guilty of laches in calling the attention of the Court to that question.

In the second place when we were introducing the evidence of Mr. Sarecky, Judge Herrick was in charge of the case in behalf of respondent's counsel, and this record upon page 1028, so far as the questions and answers of Mr. Sarecky are concerned, was introduced without any objection whatever. The whole of the latter half of page 1028 and the upper half of page '29. Now, on page 1030 Judge Werner of this Court asked this question:

> "May I ask a question, in the interest of saving time, perhaps? I would like to ask if Mr. Sarecky is to be produced as a witness. This question may very properly arise when he is on the stand.
>
> "Mr. Hinman.— If I may be permitted to answer the question, he is under subpoena by the Board of Managers and has been for several days.
>
> "Mr. Stanchfield.—You must not take it from that that the Managers intend to call him and make him their witness."

What the Board of Managers were desirous of proving with reference to Mr. Sarecky is contained on the face of pages 1028 and 1029, and when Judge Werner made that inquiry of counsel for the Board of Managers we at that moment had upon the record just the testimony that we desired with reference to Mr. Sarecky.

I submit it is late, after the Board of Managers have rested, and Mr. Sarecky, so far as I know, may have departed the jurisdiction of the Court, for them upon their side of this issue to raise the question that an answer upon the record is hearsay.

There is another proposition. It is not the only testimony in the case, as Mr. Fox states, that connects the respondent with Mr. Sarecky.

The President.— I told you I was not going to pass on that question. No testimony will be stricken out on that ground unless I am overruled by the body of the Court. The effect of any competent evidence, its sufficiency under the articles charged, must be left to the determination of the Court.

Mr. Stanchfield.— I call your specific attention to the testimony on the top of page 1028, the third line, 1028.

" Q. Was this question "— that is addressed to me —" was this question put to Mr. Sarecky: ' Where do you live? ' A. It was."

" The President.—Any objection to this introductory matter?

" Mr. Herrick.— No."

I submit, on the face of this record, that we ought not to be subjected to the annoyance, inconvenience and trouble at this day of hunting up testimony to corroborate that statement.

Mr. Fox.—What was that? I beg your pardon?

Mr. Stanchfield.— I say we ought not to be subjected at this late day, to looking up testimony to supply that evidence.

Mr. Fox.— May it please your Honor, your Honor will remember when we objected from time to time, there were repeated promises to connect, and on page 1027 Judge Herrick objected to this testimony, not upon the ground that it was typewritten, but as incompetent and immaterial, and said, " I thought it was incompetent, and I said, it was incompetent and immaterial, and there ought to be some foundation laid and some connection, and so on."

So, your Honor knows we have been endeavoring to submit to your rulings without taking any time.

Mr. Stanchfield.— The difficulty is that counsel, Judge Herrick, representing the respondent, at the time was in charge of this examination, and he made the further observation:

" The Court having overruled our objection " he need not spend any time, but can read right along.

Mr. Brackett.— That was 1028.

The President.— This is hearsay and, of course, both counsel have been very fair. They have waived on both sides a great many technicalities that they might have insisted upon, and therefore, while of course this motion is addressed entirely to the discretion of the Court, I think the discretion ought to be — as the evidence itself is hearsay, it ought to be excluded; but that de-

pends on one thing: If Sarecky comes here so that he can give the Managers an opportunity to ask him questions on cross-examination —

Mr. Herrick.— They can have every opportunity.

Mr. Stanchfield— It does not rest upon us, after counsel of the experience of counsel on the other side, have allowed this evidence to go in without criticism, that we are obliged to place Mr. Sarecky upon the stand and then they raise the question that we vouch for his truthfulness.

Mr. Fox.— No.

The President.— If you produce him as a witness on the stand, then it will go out; otherwise, not.

Mr. Herrick.— There was no proposition on our part that they should produce him.

Mr. Fox.— We understand. It goes out upon the proposition that he is produced.

The President.— If he is produced as a witness.

Mr. Fox.— Otherwise, your Honor is going to allow it to stand.

The President.— Yes.

Mr. Fox.— I understand.

Mr. Brackett.— The exact ruling should be placed on the record.

The President.— The ruling will be that, if they put Mr. Sarecky on the stand, as their witness, so as to allow you people to cross-examine him, not obliging you to make him your witness, it shall go out. Otherwise, it shall stand.

Mr. Stanchfield.— That is entirely satisfactory.

Mr. Fox.— Now I make the same motion, may it please the court, in regard to testimony given by the witness Gray on page 1062 of the record, which is of the same kind. The witness Gray was on the stand, and your Honor will remember that we had

been objecting to certain matters upon the ground it seemed to us hearsay, and as it related to the acts of the witness your Honor said, so far as it qualified his acts that you were inclined to think that it might go in, but here is a question which it seems to us falls under the present ruling. On page 1062 about the middle of the page, just above the words Mr. Hinman:

> "Q. Did he say anything further in that conversation indicating the precise place he was going, or whether he was going or whether he was going to"— it says here "say," it must be "stay," and then there was an objection, the witness answered "yes."
>
> "The President.— I do not understand the objection, Senator.
>
> "Mr. Hinman.— The witness has already stated he was going to Albany.
>
> "The President.— He can test his recollection and see if the witness cannot recollect any further statement on the subject.
>
> "Q. Where did he say he was going in Albany? A. To see William Sulzer."

Now it does seem to me without any argument the cases are precisely similar. This is perhaps more objectionable and I put the same motion for the same reason.

The President.— I do not think that falls within the ruling here. This was really the only materiality of this evidence — that is to say, the only materiality of this evidence at all was to show that they could not produce him. That is the only thing.

Mr. Fox.— Exactly.

The President.— And now they show the last he was seen in New York he said that he was going away to see the respondent.

Mr. Fox.— Isn't that pretty severe hearsay, your Honor?

The President.— In one sense, but what does he say; it proves nothing; it only tends to prove that they cannot get him.

Mr. Fox.—It proves nothing perhaps to your Honor's trained legal mind, but what it might prove to myself and others is beyond my capacity to foretell, and I really think that inasmuch as the usual way of proving that you cannot subpoena a witness is to give some evidence that you tried, of which the Managers' case both in regard to Sarecky and Colwell as I remember is absolutely barren, that we ought not to have this evidence which is purely hearsay.

The President.— I think I will let it stand. It proves nothing except on that.

Mr. Fox.— Now, in regard to the other matters, I am in one way embarrassed, and in another way I am relieved of embarrassment by the Court's statement, if I may be permitted to say so, before I have had an opportunity to make any argument on the subject, which I am very willing to submit, that no motions can properly be determined at any rate in regard to the probative force of the testimony until some later time. Would it be considered to your Honor proper that we should at any rate submit motions directed to the adequacy of the proof to sustain the allegations in the third, fourth, fifth and eighth articles?

The President.—Yes.

Mr. Fox.— Otherwise, we might seem to the Court to accede, which of course we do not accede to, that there is any evidence sufficient to warrant an adverse verdict under this article.

The President.— Yes; the Court does not wish to appear to rule on your motions in advance, but the judgment of the Court on another question practically disposes of some of the objections of the general character of which you have spoken. That is to say, that what is proved here in this case, and if it is proved, is that there is any ground to impeach this respondent; that has got to go to the final determination of the Court, and I think that statement clearly controls the disposition of the present motion.

Mr. Fox.— Without intending to argue or even to appear to argue, because I have no wish to do that, at least unnecessarily, that the reason why it seemed to us that perhaps there was substantial difference and which led us at any rate to desire to make

the motions which I had in mind — the only question that is reserved is a grave constitutional question. We all appreciate that. I may be permitted, although it is somewhat superfluous but perhaps not unbecoming, to say that the disposition which was made of the case was one which was in accord with our own personal wishes. Now, that is a matter which cannot be decided and need not be decided until the end of the case.

Now, in an ordinary criminal indictment, on the smallest, most unimportant charge when the prosecution rests on the question of whether, assuming the indictment to be good, there is evidence from which the jury may legitimately find a verdict, it seems to us that being so, that perhaps your Honor would think that in the interest of shortening the case for the defense, inasmuch as we make no criticism of the form of these articles but think that they are not only not proven but actually disproven by the evidence put in that we should know in order not to be compelled to put in evidence against something which does not exist; it puts considerable responsibility upon us, and we are not inclined to try and avoid that, but it seemed to me that if sometime before the time when we go on whenever that may be, we should have an intimation from the Court that for instance, take the case of Mr. Fuller, it is alleged in the articles that the respondent induced Mr. Fuller not to testify; Mr. Fuller is the only witness produced; his credibility of course must be assumed and he disposed of the charge. Now, ought we to be compelled to put in some evidence further upon that subject? That was the kind of argument that I wish to address to you but I do not want to press it, of course, you understand that. I only want you to understand what our position was.

The President.— That I explained to the other members of the Court when we were requested to dispose of the motion to dismiss these articles on the ground they did not constitute impeachable offenses.

I stated that the condition of an impeachment trial was peculiar. Of course in an ordinary criminal trial you have got a jury and the judge, or court, if it is composed of more than one. The jury disposes of the fact, and the judge disposes of the law, but here in an impeachment trial the facts and the law are al-

most inextricably blended, unless of course in an extravagant case that is only possible to imagine, that the thing was absurd either one way or the other, either the charge or the objections, and, therefore, it seems to me we have got to adopt here just the same course we did before, and since rendering that, I see I am fortified in the position I then assumed by the remarks of a learned and great judge on the trial of Judge Barnard. The question was sought to be raised there, on motion, whether on certain articles he could be compelled to answer questions, whether he could be impeached for offenses committed in a previous term. He said that question should be left to the trial.

He said at that time it may be raised by objection to the evidence, but he appears to have changed his opinion and allowed the evidence to come in, and the whole cause was finally submitted; and therefore it is that unless some gentlemen wish to take a vote of the Court, I shall hold that motions involving the probative force of competent evidence must be left to the final submission of the case.

Mr. Fox.— I have nothing, of course, to say except to suggest that within the limitations suggested by the Court, either that the charge in regard to the evidence was absurd, or that there was no evidence —

The President.— Or the objections to it are absurd.

Mr. Fox.— I see. I think I can show the Court, not that I wish to argue about the probative force of testimony, but at least I shall ask the opportunity, of course not pressing it, to explain to the Court there was absolutely no evidence in regard to the matter to which I addressed the attention and some other matters. Of course that is different, but I take it from what your Honor says, you prefer we shall not do that. Can we put upon the record that counsel to the respondent desires to make motions to establish the conclusion that neither one of articles numbered 3, 4, 5, 7 and 8 is supported by any testimony or testimony worthy of consideration in Court, and that on intimation of the Court those motions are reserved and may be made later with the same force and effect as if made now.

The President.— Yes.

Mr. Fox.— That states your Honor's position entirely?

The President.— Correct.

Mr. Fox.— Then I am relieved for the present.

Mr. Herrick.— It is, of course, unnecessary for me to state that we are surprised at the ruling, not intending to criticise it. We had supposed that the discussion of our motion to dismiss these several articles mentioned by Mr. Fox would take some considerable time this afternoon. I say we are surprised. We are not in condition to go on, and I renew my motion to ask for a postponement of this case until Monday. I told you yesterday that one of my associates had nearly broken down. He is still worse now. It is impossible for us to proceed. By adjourning to Monday you only lose four hours to-morrow, and I believe that we can profitably employ it in such a way as to shorten up the trial of this case, and more than make up the time that we ask you to grant us. It would be useless to go on to-morrow with one or two witnesses possibly. The most important one we want to lead off with we cannot procure to-day. He is away, and I most earnestly press and ask in justice to the respondent, in justice to counsel in this case, that we be granted a short delay.

The President.— Judge Herrick, I speak now not only for myself, but for all my associates in the Court, and what was said in what may be called the private conference of the members, there is no disposition to be unduly insistent on the defense proceeding; but it is the wish of the Court, and they think it should be done, to get all these preliminary matters out of the way, so we can get right to the orderly trial of the cause. Does this dispose of all matters, motions to be made?

Mr. Herrick.— I know of none other, sir. We expect of course, if Mr. Hinman has not recovered by that time, some other counsel will have to open the case, or we will have to waive it.

The President.— Was Mr. Hinman to open it?

Mr. Herrick.— Mr. Hinman was to open the case. He cannot do it now.

The President.— I am inclined to think, under those circumstances —

Mr. Herrick.— You have seen him here, and have seen his condition, the condition he was in on the last day or so.

The President.— I am inclined to think, under these circumstances, there is merit in the application. Judge Collin, what have you to say?

Judge Collin.— Mr. Presiding Judge, I move that the motion made by respondent's counsel be granted, and that an adjournment be taken until Monday next, at 2 o'clock P. M.

Senator Wagner.— I second the motion.

Mr. Herrick.— We will endeavor to proceed just as rapidly as possible.

The President.— I have no doubt of that.

All those in favor, please say aye.

Opposed, no.

The application will be granted. Have you got witnesses in attendance?

Mr. Herrick.— None in attendance. There are some under subpoena.

Mr. Stanchfield.— We have.

The President.— Crier, give notices to the witnesses of the adjournment until Monday, at 2 o'clock, without further notice.

The Crier.— All witnesses are excused until next Monday afternoon, at 2 o'clock.

The President.— Adjourn court until Monday.

The Crier.— Hear ye, hear ye, hear ye, all persons having any further business before this Court of Impeachment, held in and for the State of New York, may depart hence and appear here next Monday afternoon, at 2 o'clock, to which time this Court now stands adjourned.

Whereupon, at 2:40 o'clock P. M., the Court adjourned to meet again on Monday, October 6, 1913, at 2 o'clock P. M.

SENATE CHAMBER,

ALBANY, N. Y., *October* 6, 1913.

Pursuant to adjournment the Court convened at 2 o'clock p. m.

PRESENT:

Hon. EDGAR M. CULLEN, Presiding Judge,
and
THE JUDGES OF THE COURT OF APPEALS,
and
THE SENATORS OF THE STATE OF NEW YORK.

APPEARANCES:

THE MANAGERS:

Same as heretofore.

Counsel for the Managers:

Same as heretofore.

Counsel for the Respondent:

Same as heretofore.

The President.— Call the roll.

The Clerk thereupon called the roll and found that there was a quorum present with the following absentees:

Senator Brown.
Judge Collin.
Judge Gray.
Senator Griffin.
Senator Fitzgerald.
Senator McClelland.
Senator White.

The President.— Crier, open Court.

The Crier.— Hear ye, hear ye, hear ye, all persons having business before this Court of Impeachment held in and for the State of New York, give their attendance, and they will be heard.

Mr. Stanchfield.— If the Presiding Judge please: Before counsel for the respondent enter upon the presentation of their case, we desire in behalf of the Board of Managers, to ask permission to reopen the case for the taking of some further testimony, and the basis for that request is predicated upon the fact that the availability and information in regard to that testimony has reached us since the Court took its adjournment upon Thursday last, and its presentation is owing in no way to any delay upon the part of the Board of Managers. This testimony, if the Presiding Judge please, is of great moment and consequence to the Board of Managers, otherwise this application would not be made, and it will be, I might say, very brief.

Mr. Herrick.— May we ask the names of the witnesses?

Mr. Stanchfield.— Yes.

Mr. Herrick.— Who are they?

Mr. Stanchfield.— Mr. Allen A. Ryan.

Mr. Herrick.— And Mr. Meany?

Mr. Stanchfield.— Mr. I. V. McGlone.

Mr. Herrick.— And Mr. Meany?

Mr. Stanchfield.— Yes, and Mr. James.

Mr. Herrick.— Mr. Meany was under subpoena last week in attendance here, wasn't he?

Mr. Stanchfield.— I don't know.

Mr. Herrick.— You say he was not under subpoena by the Board of Managers?

Mr. Stanchfield.— I say I do not know. I will ascertain the fact. I had nothing to do with it.

Mr. Herrick.— Mr. Ryan?

Mr. Stanchfield.— Not to my knowledge.

Mr. Herrick.— Our information is that Mr. Meany has been under subpoena for some considerable length of time, and both

in town with Mr. Ryan, whether under subpoena or not I do not know, but here in town, and that both of those gentlemen have been interviewed as to their testimony.

The President.— I think it should be admitted. If you want further time, of course —

Mr. Herrick.— One moment, please. You will hear us before you decide, I trust?

The President.— Yes.

Mr. Herrick.— In addition to that these are matters that are not set forth in the articles of impeachment.

The President.— That I cannot tell until the question is put to the witness.

Mr. Herrick.— I will venture to say that my learned friend will not state that they are matters that are set out in the articles of impeachment.

Mr. Stanchfield.— Judge Herrick I am perfectly willing to debate that question when it arises. I do not care to discuss an academic question.

Mr. Herrick.— It is not an academic question.

Mr. Stanchfield.— As I see it, it is.

Mr. Herrick.— Counsel knows whether the matters are in the articles of impeachment or not, and if they are not, we contend they are not admissible. After they have had the witnesses under subpoena, after they have interviewed the witnesses, after they have closed their case, and we are about to begin our case, it seems to me it is grossly unfair to come in at this time and ask your Honor to re-open this whole subject.

The President.— You have not even opened your case, I think it should be allowed, and if you require further time, of course you shall have it.

Mr. Herrick.— We do not require further time.

Mr. Stanchfield.— Mr. Ryan, will you take the stand?

The Clerk.— You do solemnly swear that the evidence which you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer, as Governor of this State, shall be the truth, the whole truth and nothing but the truth, so help you God.

The Witness.— I do.

The Clerk.— What is your full name?

The Witness.— Allen A. Ryan.

ALLEN A. RYAN, a witness called on behalf of the Managers, having been first duly sworn, in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Stanchfield:

Q. Mr. Ryan, where do you reside? A. Suffern.

Q. You will have to speak so the people all over the Chamber will be able to hear you? A. Suffern.

Q. Your occupation is what? A. (No response).

The President.— Answer, witness.

Q. What line of business, Mr. Ryan, do you follow? A. A great many.

The President.— What was the answer?

Q. In general, I am asking you as a preliminary just what you would call your occupation? A. I am a member of the New York Stock Exchange.

Q. Are you, among other businesses, a banker? A. No, sir.

Q. Broker? A. No, sir.

Q. Do you have a business office in New York city? A. 66 Liberty street.

Q. Are you in business for yourself, or as a member of a firm? A. For myself.

Q. Are you the son of Thomas F. Ryan? A. I am.

Q. How old are you? A. Thirty-three.

Q. Now, are you acquainted with the respondent, Governor Sulzer? A. Yes, sir.

Q. How far back does your acquaintance go with him? A. I can't recall when I met him.

Q. Well —

The President.— Approximately, about how long?

The Witness.— The first time.

Q. About how long have you known him? A. (No answer).

Mr. Stanchfield.— I withdraw that question.

Q. Did you know him prior to his becoming a candidate upon the Democratic ticket for Governor of New York? A. I knew him by sight and I think that I probably was introduced to him.

Q. Before he was — A. (Interrupting.) Before he was a candidate.

Q. You have met him personally before he became a candidate? A. I believe so, but I am not positive.

Q. Well, I think the undisputed testimony in the case will show that he was nominated for Governor on the second of November, 1912?

Mr. Hinman.— The morning of the third.

Mr. Stanchfield.— I accept the suggestion. On the morning of the 3d of October, 1912.

Q. Now, with reference to that date, had you met him prior to that time? A. I believe so.

Q. So that you had a personal acquaintance with him before that time? A. I had been introduced to him before that time.

Q. Now, with reference to his becoming the candidate of the Democratic party for Governor on the morning of the 3d of October, 1912, when did you next see him? A. About December 12th.

Q. December 12th? A. Yes, sir; about the 11th or 12th of December.

Q. Did you see him before election at all? A. Not to speak with.

Q. Did you have any personal communication with him at all before election? A. Only by telephone.

Q. Can you fix in point of time when you had a conversation with him by telephone? A. (No answer.)

Q. Approximately? A. About the middle of October.

Q. Now, what was said between you and Governor Sulzer in that conversation by telephone?

Mr. Herrick.— One moment, we object to this. I assume, and I think that counsel for the purpose of disposing of the question, should state frankly, the purpose of this is to show some additional contribution.

Mr. Stanchfield.— I expect to show that, Judge Herrick, yes.

Mr. Herrick.— Then we object to it.

The President.— I think the contribution —

Mr. Herrick.—Will you hear me a moment before you decide?

The President.—Yes.

Mr. Herrick.— Last week your Honor in stating — restating the ruling that you had made stated that you had been reinforced in the correctness of the conclusions at which you had arrived by examining somewhat the rulings in the Barnard case, and the opinion of the chief judge, whom you spoke of very justly in high terms as a great judge, the ruling that he had made there.

I wish also in this connection, as bearing upon this question, to call your attention to another ruling that he made. Barnard trial, vol. 2, pp. 1294–1295 and 1296, where it was attempted to introduce evidence in relation to declarations and statements made by Judge Barnard in relation to his judicial action. The evidence that was given was stricken out as incompetent and does not appear in the case, but the chief judge, in striking it out, said:

> "I do not think that the testimony is competent. The conversation is not alleged in any article as a charge against Judge Barnard, and I do not think it bears upon any of the charges legitimately made against him. It relates to a transaction entirely outside of anything that is charged in the article."

Then, after some discussion amongst counsel:

> "So far as I am concerned, my opinion is unchanged. This evidence is incompetent. The testimony drawn from

Judge Birdseye who had given some other testimony was in the nature of general admissions relating to the motive or bearing upon the motives of Judge Barnard's judicial action. Now, I don't think it is competent to show a communication of the respondent as to a particular transaction, judicial or otherwise, which transaction is not alleged or set up, in these articles as a charge against him. I do not think it is competent for the court to infer, through a transaction not charged against him in these articles, a wrong as to the charges which are made. I will, however, submit the question to the court because they may differ with me upon that subject. The question is whether this evidence shall be received, and the clerk will call the roll."

The ruling of the Chief Judge was sustained by a vote of 21 to 10.

Further, probably the greatest impeachment trial that was ever held was that of Warren Hastings, prosecuted and defended by the men of greatest ability; learned judges composed a part of that Court, as they do of this Court. The same question came up there. I have four separate and distinct rulings. I will call your attention to one only, for the sake of brevity. On the second day of June, the Lords resolved that it was not competent for the Managers on the part of the Commons to give any evidence in the seventh article of impeachment, to prove that the letter of the 5th of May, 1771, was false in any other particular than that wherein it is expressly charged to be false. Now, in these articles of impeachment, it is expressly charged to be false because he did not make the returns of certain specified contributions. Now, we say that under this rule this evidence is incompetent.

The President.— I think the evidence is competent within the rule heretofore made by the Court. Of course, if it throws no light on the other articles charged, on the offenses charged in the articles, it is incompetent, and for that reason the Court has already excluded all evidence offered by the Managers to show that any bargain was made as to the signing or vetoing of bills, or attempted to be made between the respondent here and certain of the members of the Legislature, except those charged under

the indictment, because one would have no bearing on the other, but as to this part of the articles, it is already said under a decision of the Court of Appeals, that where the scienter is not clear you are at liberty to show similar acts to characterize whether this was done unintentionally or whether it was done personally, or was part of a scheme, and so it seems to me to come right within the previous ruling of the Court; and I do not think the ruling of that very eminent judge is adverse to the ruling of the president of this Court, subject to the approval of the other members, as now made.

By Mr. Stanchfield:

Q. Mr. Ryan, I was addressing your attention to a telephonic conversation you stated that you had with Governor Sulzer in October; the Court holds you may answer that; will you give us that conversation, please? A. I cannot recollect exactly what the conversation was.

Mr. Herrick.— A further objection; I would like to know who this conversation was with?

The President.— I understood him to say with the respondent here.

Mr. Herrick.— I did not understand he said so, up to this time.

Q. With whom did I understand you to say you had this conversation by telephone? A. With Mr. William Sulzer.

The President.— I understood him to say that.

Q. Will you give us, if you cannot give the exact language, give us the substance of that conversation? A. It was to the effect that he wished —

Mr. Herrick.— One moment. We object to what the effect was.

The President.— That is only a form of words, the same as he believes, he thinks, he guesses; it means all the same thing.

The Witness.— If the Court would permit, I would like to give, describe the situation as it was, as it came about.

The President.— No. I think you better answer the question. State the substance, if you can. First, did you speak to him, or did he speak to you over the telephone, first?

Mr. Herrick.— Your Honor is asking him some questions. Would you ask him how he knew it was Sulzer's voice?

The President.— You may ask him.

By Mr. Herrick:

Q. How do you know it was Sulzer's voice? A. Mr. Sulzer endeavored several times to get into communication —

Mr. Herrick.— I object to that, he had endeavored.

The President.— That will be sustained.

Mr. Marshall.— I ask to have it stricken out.

Mr. Stanchfield.— The inquiry, Mr. Ryan, that is now put is how you knew it was Mr. Sulzer's voice, and the Court holds that you must answer that inquiry first. A. My telephone operator informed me of that fact.

Mr. Herrick.— I object to that, and move to strike it out. Also his previous answer, would your Honor rule?

The President.— Yes.

By Mr. Stanchfield:

Q. Did you yourself have a telephone conversation with William Sulzer?

Mr. Herrick.— That is objected to on the same ground. We don't know it was his voice yet.

The President.— Overruled.

By Mr. Stanchfield:

Q. You will answer, Mr. Ryan. A. I did.

Mr. Herrick.— He has not answered your Honor's question, as to whether he knew it was his voice?

The President.— I am going to let you cross-examine on it.

By Mr. Herrick:

Q. How did you know it was William Sulzer's voice? Had you ever conversed with him over the telephone before? A. He told me himself.

Q. Over the telephone? A. Over the telephone.

Q. Did you recognize his voice over the telephone? A. I could not say that I recognized his voice.

Q. Are you sure it was not a conversation with Mr. Lamar, David Lamar? A. (No response.)

Q. How is that? A. (No response.)

Q. Can you answer? A. Mr. Sulzer said it was —

Q. Just answer the question? A. I don't know.

Q. You don't know whose voice it was, do you?

By the President:

Q. Did you know his voice at the time? A. No.

Q. Did you ever speak to him — you said you spoke to him subsequently in person, that is, in the presence of each other, was that so in December? A. Yes, sir.

Q. Was there anything said by either of you about your previous conversation over the telephone? Or what you say was your previous conversation? A. No, sir.

By Mr. Stanchfield:

Q. Now, Mr. Ryan, — if the Presiding Judge please, Mr. Ryan —

Mr. Herrick.— He has not answered my question.

The President.— Your objection is sustained, so far, unless he proceeds further.

By Mr. Stanchfield:

Q. How did you first learn that Governor Sulzer desired to speak to you by telephone in October?

Mr. Herrick.— That is objected to. It appears already it was hearsay; somebody else told him.

Mr. Stanchfield.— I have a right, if your Honor please —

The President.— I will give you the opportunity to see if you can connect the conversation. Don't state the conversation — and if he does not it will go out.

By Mr. Stanchfield:

Q. Before you spoke over the telephone at all, how was your attention brought to the fact that William Sulzer desired to speak to you? A. Mr. McGlone on the 'phone.

Q. Who is Mr. McGlone? A. He is my father's private secretary.

Q. And has been your father's private secretary for how long? A. Ten or twelve years at least.

Q. In the conversation that you had with Mr. McGlone, did you learn that William Sulzer desired to speak to you over the telephone?

Mr. Herrick.— That is objected to.

A. Yes, sir.

Mr. Herrick.— I object. It is hearsay. We don't know how McGlone knew.

The President.— Objection sustained.

Mr. Stanchfield.— I will follow that up.

The President.— You have got that, first he heard on the subject was what Mr. McGlone, if that is the name, told him.

Mr. Stanchfield.—Will the presiding judge take my statement, as a lawyer, for the proposition that, if this story is permitted to be told, without consuming a great deal of time, it will be made perfectly competent, absolutely competent.

Mr. Marshall.— That is no way to prove it.

The President.—You ought to make it competent first.

Mr. Stanchfield.— Very well. I will follow this with one more question on that subject.

Q. Mr. Ryan in the telephonic communication that occurred, were you able to identify or recognize the voice of Governor Sulzer?

Mr. Herrick.— He has answered that already, and said he didn't know his voice.

The President.— Well, answer it.

Mr. Stanchfield.— He can answer it once more.

A. The fact that he requested me to deliver a message for him to my father.

Mr. Herrick.— That is objected to, and I ask to have it stricken out.

By Mr. Stanchfield:

Q. Is that the only way in which you recognized —

The President.— Granted.

Mr. Stanchfield.— Just a moment, Judge Herrick.

Mr. Herrick.— I want to see whether it is stricken out.

The President.— Granted.

By Mr. Stanchfield:

Q. Was there any other way in that conversation by which you could state whether or not it was the voice of Governor Sulzer?

Mr. Herrick.— That is objected to. He assumed it one way, and this is another.

The President.— Overruled. Answer.

The Witness.— As I recollect, he wished to see —

The President.— No.

By Mr. Stanchfield:

Q. The question is addressed entirely to whether or no there was any other way than that you have not related, in which you recognized his voice as that of Governor Sulzer? A. If it is a question of voice, I could not recognize it.

Q. Very well. When did you see him, or have any conversation with him again?

Mr. Marshall.— The word "again"—

Mr. Herrick.— This is objected to.

Mr. Stanchfield.— Strike out the word "again."

The President.—Yes.

By Mr. Stanchfield:

Q. When did you have a talk with the respondent, Governor Sulzer?

The President.— Face to face.

A. December 11th or 12th.

Q. Of what year? A. 1912.

Q. What was that conversation, as nearly as you can remember? A. It was a personal matter. It had nothing to do with any of these proceedings.

Q. Of any kind? A. No, sir.

Q. When did you see him again? A. The Thursday before, the Wednesday or Thursday before this Court convened.

Q. That is, you mean in the month of September just gone by? A. Yes, sir.

Q. Your best recollection would be a day or two before the convening of this Court of Impeachment? A. No, sir. As I remember, this Court convened on Wednesday, the 18th.

Q. The 18th of September, Thursday? A. It was the week before.

Q. It was the week before? A. Yes, sir.

Q. Did you see him in person the week before? A. Yes, sir.

Q. Where? A. 115 Broadway, I believe was the number.

Q. Do you recollect what time of day it was that you saw him? A. About 12 — about 11.30.

Q. Was he alone? A. Yes, sir.

Q. Give me the conversation you had with him at that time.

Mr. Herrick.— Objected to as incompetent and immaterial.

By the President:

Q. Was it on the subject of campaign gifts? A. No, sir.

Q. Or contributions of any kind?

Mr. Stanchfield: Well —

The President.— You ought to confine it to the subject, Mr. Stanchfield.

Mr. Stanchfield.— I never have talked with this witness, if the presiding judge please, and I am endeavoring to elicit this evidence in a way without leading him, that would make it competent.

The President.— Put your question.

By Mr. Stanchfield:

Q. This conversation you say took place about 12 o'clock in the forenoon or at noon? A. Shortly after 11 o'clock.

Q. Was it in his office? A. It was a certain room in 115 Broadway that he requested me to go to.

Q. Do you recollect where that room was? A. It was towards the west end of the corridor on the north side of the building.

Q. Do you recollect what floor it was on or whose office it was in? A. I believe it was in the office of an attorney by the name of Frankelstein.

Q. Frankenstein; when you went to this office did you see anyone there excepting Governor Sulzer? A. He introduced me to a Governor Briggs.

Q. Spriggs? A. Spriggs.

Q. Now, after this introduction where did you go with Governor Sulzer? A. I was going into this room when he introduced me. This gentleman was leaving the room.

Q. And did the interview that you had with Governor Sulzer

take place immediately after Governor Spriggs left or passed out? A. Yes, sir.

Q. Was the door closed? A. Yes, sir.

Q. You say that this meeting took place in a room where he requested you to see him? A. Yes, sir.

Q. How did he make that request? A. By telephone.

Q. Did you notice his voice at that time? A. Yes, sir.

Q. Now did you follow up his request to come and see him at that room? A. Yes, sir.

Q. Was the voice that called you at that time the same voice that made the original appointment with you in the middle of October before? A. Yes, sir.

Q. I will take you back, Mr. Ryan, to this conversation of October 12th, and I now ask you to have your mind upon that? A. Yes, sir.

Q. I now ask you to give me the substance of that conversation.

Mr. Herrick.— That is objected to as incompetent and immaterial.

The President.— Objection overruled.

Q. You may answer; give me the substance now of that conversation? A. I can now recollect one or two sentences, exact sentences of the conversation.

Q. Give those? A. He said in words these words: "Tell your father I am the same old Bill."

Q. That is one of the sentences? A. Yes, sir.

Q. What was the other sentences that you recall in words? A. That is the only sentences I can recall in exact words.

Q. That is, you mean of which you can recall the exact words? A. Exactly.

Q. Give me the substance of the balance of the conversation? A. That he wished to see me and I told him he would have to see Mr. McGlone.

Q. Is that all? A. That is the substance of the conversation.

Q. Will you give me the initials of Mr. McGlone? A. I. V. McGlone.

Q. Now, was there anything said in that conversation, if you

have not exhausted your recollection, as to the subject upon which he wished to see your father? A. I don't think he said he wanted to see my father; my father was abroad.

Q. Yes. When you told him to see Mr. McGlone, or that he would have to see Mr. McGlone, did he say anything to you as to the subject upon which he wished to see Mr. McGlone?

By the President:

Q. He said first he wished to see him, as I understood, and then he told him he would have to see Mr. McGlone, was that correct? A. That is as I recollect it.

Q. Well now, did he tell you what he wanted to see you about? A. Not that I can—

Q. Did he make any allusion to the subject? A. To what subject?

Q. To the subject he wanted to speak to you. Didn't he tell you anything about that? A. Not that I can recollect.

By Mr. Stanchfield:

Q. Well now, did he tell you in that conversation, after you said he would have to see Mr. McGlone, did he state then anything about the subject upon which he wished to speak either to you or to Mr. McGlone if he saw him? A. Not that I remember.

Q. Now, you didn't see him again, as I understand you, to talk over anything with reference to these contributions, or the subject of this impeachment, upon the following, this last September, is that right? A. No, sir.

Mr. Marshall.—Wait a minute. We object to that and ask to have that answer stricken out because the witness has not said anything about contributions so far as I recollect.

Mr. Stanchfield.— It may be stricken out in that respect.

Mr. Marshall.— It is putting words in the witness' mouth.

Mr. Stanchfield.— I do not intend, Mr. Marshall, to do that. Any part of the question that you want to go out may go out. I suppose you refer to the general language upon the subject of the Court of Impeachment.

Mr. Marshall.— No, the question of contributions.

Q. Did you have any conversation with Mr. Ryan upon any subject in any way referring directly or indirectly to these contributions until this last September?

Mr. Herrick.—Wait a minute. He said that he had no conversation about any contribution and this assumes that he did.

The President.—You saw him next, witness, two or three weeks ago, a week before this Court convened?

The Witness.— I did.

Q. Well, the only reason I am putting you those inquiries is that there is an intervening meeting which had no reference in any way— A. (Interrupting) None whatever.

Q. (Continuing) And did not refer to anything that is involved in this controversy. Now, how soon afterward did you — after this conversation with Mr. Sulzer in the month of October, did you see Mr. McGlone? A. I saw him constantly, he was in my — in the room adjoining mine.

Q. Did you have — I don't ask you what it was — any conversation with Mr. McGlone, in a general way, as to him having seen Governor Sulzer? A. I did.

Q. About when was that, as a matter of time, just to fix the dates? A. Directly after the telephonic communication.

Q. Now, is Mr. McGlone here? A. Yes, sir.

Mr. Stanchfield.— If your Honor will permit me to have this witness step aside for a moment.

The President.— Yes.

Mr. Marshall.—Are you through with him?

Mr. Stanchfield.— No, I am not through with him. Simply because of certain objections that are made here as to this evidence. Mr. McGlone, will you please take the stand?

The President.— Swear the witness.

The Clerk.— You do solemnly swear that the evidence that you shall give upon this hearing upon certain articles of impeach-

ment preferred against William Sulzer, as Governor of this State, shall be the truth, the whole truth and nothing but the truth, so help you God?

Mr. McGlone.— I do.

The Clerk.— What is your full name, please?

Mr. McGlone.— Ignatius V. McGlone.

IGNATIUS V. MCGLONE, a witness called in behalf of the Managers, having been first duly sworn in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Stanchfield:

Q. Mr. McGlone, will you speak up distinctly so that the gentlemen in the body of this Court may hear you? A. Yes, sir.

The President.—And look at that gentleman in the furthest part of the room?

The Witness.— Yes, sir.

Q. Mr. McGlone, where do you live? A. New York, 960 Park avenue, Manhattan.

Q. I don't believe they can hear you yet; you will have to speak a little louder? A. 960 Park avenue, New York.

Q. What is your vocation? A. Secretary to Mr. Thomas F. Ryan.

Q. How long have you been secretary for Mr. Thomas F. Ryan? A. Twelve years.

Q. Now, are you acquainted with Allan Ryan, his son, the last witness? A. Yes, sir.

Q. Where is your office with reference to the private office of Mr. Allan Ryan? A. Adjoining room, 66 Liberty street, the adjoining room.

Q. In adjoining rooms? A. Yes, sir.

Q. I wish you would keep your voice up, Mr. McGlone; these gentlemen all want to hear you; it is difficult for them to hear. Do you recall in the month of October, 1912, having a talk with Governor Sulzer? A. Yes, sir.

Q. When did you first meet Governor Sulzer? A. I met Governor — he was Congressman then, about ten years ago.

Q. You have known him for ten years? A. Yes, sir.

Q. Have you met him from time to time? A. Only incidentally since that time.

Q. Well, I say — you say only incidentally; my inquiry is have you met him from time to time? A. Yes.

Q. Now, how did you have your first conversation with him in the fall of 1912, in October? A. In October, 1912, after Governor Sulzer was nominated, after I reached their office, we were then, Mr. Stanchfield, at 32 Liberty Street, not then at 66 Liberty Street.

Q. Yes. A. We changed our office since that time. When I reached my office —

The President.— Keep your voice up, witness.

The Witness.— I had been told that I had been wanted —

Mr. Herrick.— Wait a moment. We object to what he has been told.

The President.— Now, you were told something. Then what did you do.

The Witness.— I spoke to Mr. Allan Ryan about it.

The President.— Then after you spoke to that — that was the last witness — after you spoke to him what then did you do? A. I didn't do anything. He afterwards came to me —

Q. (Interrupting) Now, wait a minute. Who did? A. Mr. Allan Ryan.

Q. Yes, and you had a talk with him? A. I had a talk with him after I got this message.

Q. Well now, did you that day have any telephonic talk with Governor Sulzer? A. I did not.

Q. You did not. When did you see Governor Sulzer? A. After I had talked with Mr. Ryan.

Q. On what day? A. I can't recall; it was sometime after the campaign — during the campaign — after his nomination, sometime, I should say between the 11th and 22d of October.

Q. Now, did you see Governor Sulzer — between the 11th and 22d of October was his answer? A. I should say between that time, yes, sir.

Q. Did you see Governor Sulzer on the day that you had this talk with Allan Ryan to which — A. (Interrupting) I did.

Q. (Continuing) To which you are referring? A. Yes.

Q. What time of day did you see him? A. It was after 1 o'clock.

Q. Tell us the conversation that you had with him at that time.

Mr. Herrick.— That is objected to.

The President.— Objection overruled.

A. I went to see him at 115 Broadway; he spoke about his campaign. I said some things to him. I said I did not think there was any question about his election. That he was sure to be elected, and he said no, he wanted to make a personal campaign. I said, that inasmuch as he was nominated by the organization, the organization ought to give him the money, and he said no, that he needed certain money.

By the President:

Q. He said what? A. That he needed some money.

By Mr. Stanchfield:

Q. Just finish that conversation? A. He said to me he needed some money. I told him I could not give it to him without consulting with somebody else. He said he was going out on a campaign tour. I said I would see him when he came back, but in the meantime I would have to talk with somebody else before I gave him anything. I spoke to somebody else about it, and we agreed to give him a certain sum of money, which I gave him. That is all I know about it.

Q. Before you get down to this conversation with somebody else, had you finished the talk you had with Governor Sulzer in his office? A. Practically, yes.

Q. Had there anything been said between you at that interview with regard to the amount that he wanted from you or from Mr. Ryan, for his campaign?

Mr. Herrick.— One moment; that is objected to.

The President. — I think he may answer. Overruled.

A. Yes, sir.

Q. What did he say on that subject? A. That he wanted $7,500, or as much more as he could get.

Q. He wanted $7,500 or as much more as he could get? A. Yes, sir.

Q. Did you have any conversation at that time as to where Mr. Thomas F. Ryan was? A. Not a thing mentioned.

Q. As to his whereabouts? A. No, sir, except that he was abroad.

Q. That subject was mentioned then that he was out of the country? A. Oh, yes, certainly.

Q. Have you now told all of that conversation that you recall? A. There may be some details that I do not recall just at the present time.

Q. Have you given us the substance of it? A. The substance of it, yes, sir.

Q. With what man did you desire to speak? A. Allen A. Ryan.

Q. After you left Governor Sulzer, did you see Allen Ryan? A. I saw him the same afternoon, as I recall.

Q. Did you have a conversation with him? A. Yes, sir.

Q. In regard to making a contribution to Governor Sulzer's campaign? A. Yes, sir.

Mr. Hinman.—We object to the form of the question of counsel because it assumes facts not proven, and no foundation has been laid for the form in which the questions are put. They are incompetent in form.

The President.— How is it material, counsel? See what he did, have you got to the point —

Mr. Stanchfield.— I will accept the suggestion as made.

Mr. Hinman.— Then I move to strike out the answer that has been given.

The President.—Yes.

Q. When did you see Governor Sulzer again? A. The next day.

Q. Where? A. At his office, 115 Broadway.

Q. Was there anyone present at the time of your interview with him? A. Nobody.

Q. Was there present anybody the day before, when you had your interview with him? A. No, sir.

Q. What was your talk with him upon this second occasion? A. Simply went in to see him, and I handed him some money.

Q. How much? A. $10,000.

Q. In what denomination? A. $1,000 bills.

Q. Tell us the conversation? A. There was no conversation to speak of. I simply went in to see him. It was about two o'clock in the afternoon I think. I handed him the money. He counted it and put it in his pocket and thanked me, and said if he was elected Governor, and for any reason I should ever happen to be in Albany, he would be glad to see me, and asked me to remember him to Mr. Allen Ryan. That was the end of the conversation, and I went out.

Q. Did you have any further talk with him later? A. I sent him a telegram of congratulations election night.

Q. You did not see him personally? A. Oh, no.

Q. Did you ever see him personally to have any conversation after his election? A. I did, in Albany, after he was inaugurated.

Q. Did you have any conversation with him at that time in regard to that contribution? A. Not one word.

Q. Running back for a moment, Mr. McGlone, to the first talk you had in Governor Sulzer's office, when you said you would have to go and see another man, was there anything said by him to you as to whether or not he had been endeavoring to get in touch with you, or to reach you or Mr. Ryan? A. Oh, yes, he said he had been trying to get me on the telephone, but he could not get me.

Q. Did he say how often he had tried? A. He said three or four times.

Q. These conversations that he had with you by phone took place this same day? A. No, some were to-day, and some to-morrow; or some yesterday and some to-day. There were two different days.

Q. Then they ran over a period of two days? A. Yes, sir.

Q. Did he have this conversation with you in which he stated that he had been trying to get you three or four times upon the phone on the same day of your interview with him? A. No.

By the President:

Q. Do you understand the question? The question is not when he tried to get you on the phone, but when did he tell you he tried to get you? A. The day I saw him.

By Mr. Stanchfield:

Q. The day you saw him? A. Yes, sir.

Q. How was it, Mr. McGlone, that you happened to take over there in cash ten $1,000 bills?

Mr. Herrick.— That is objected to as incompetent and immaterial as to how he came to do it.

The President.— Was there anything said on that subject by you to the respondent?

Q. What was said between you and Governor Sulzer as to how this contribution should be made? A. Nothing.

Q. Did you discuss in any way the way in which it should be made? A. Not the slightest, not in any way.

Q. Neither with Mr. Sulzer nor with Mr. Ryan? A. No, neither one.

Q. Never tell him everything that was said, Mr. McGlone? A. Everything that I recall.

Q. Between you and Governor Sulzer as to what this money was to be for? A. Except I always understood —

Mr. Herrick.— No, that is objected to.

Q. No, not what you understood. What did Governor Sulzer say to you, and what did you say to him? When he was asking for this contribution, as to the purpose for which he wanted it?

Mr. Herrick.— That is objected to; he said he has gone over it and told everything.

By the President:

Q. Did he say anything further, what he wanted than you have told? A. For his personal campaign.

By Mr. Stanchfield:

Q. For his personal campaign? A. Yes, sir

Mr. Stanchfield.— You may cross examine.

Mr. Herrick.— No questions.

Mr. Stanchfield.— One more question there, Mr. McGlone.

Q. Have you told me all of the conversation that you had with him upon the subject of wanting this money for his personal campaign?

Mr. Herrick.— One moment.

Mr. Stanchfield.— I submit that question is perfectly proper.

By the President:

Q. Did he say anything further, witness? A. Nothing that I recall now.

By Mr. Stanchfield:

Q. Was there anything said by him to you at that time with reference to his needing more money for his personal campaign? A. Nothing except that he had no money for his personal campaign, and he wanted this money for his personal campaign. Oh, he did say this, that he was going up to Westchester and adjoining counties to make a campaign and wanted money for it.

The President.— Oh, you drop your voice, Mr. Witness.

(The answer was read by the reporter.)

Q. Is that all that you can now recall? A. That is all that I recall.

Mr. Stanchfield.— That is all. I will recall Mr. Ryan.

ALLAN A. RYAN, recalled.

By Mr. Stanchfield:

Q. Mr. Ryan, I call your attention to a conversation which you say you had with Governor Sulzer the week before the convening of this Court of Impeachment. Where was that conversation? A. 125 Broadway.

Q. At the time when the conversation was had between you and Governor Sulzer, was there anyone else present? A. When I had the conversation?

Q. Yes. A. Nobody present.

Q. Will you tell us what that conversation was, as nearly as you can recall it, either the language or the substance? A. He made certain requests of me.

Q. What was those requests?

Mr. Herrick.— What did he say?

By the President:

Q. What did he say? A. He asked me to go to Washington to see Senator Root for him.

By Mr. Stanchfield:

Q. Yes. Go right along and tell us the whole of the conversation you had with him, as well as you recall it.

Mr. Herrick.— How is that material or competent?

The President.— It is not, unless it relates to a subject of these contributions.

By Mr. Stanchfield:

Q. Go ahead and tell us the whole of the conversation.

Mr. Herrick.— He said he asked him to go to Washington to see Senator Root for him. How is that competent?

The President.— I don't see how it is. Objection sustained.

By the President:

Q. Did he say anything to you on the subject of the contribution you had made or any contributions?

Mr. Stanchfield.— That is not my inquiry, if the Presiding Judge please.

By Mr. Stanchfield:

Q. Did you have any talk with him at that time in substance with reference to his approaching trial? A. Yes, sir.

Q. I want to know what that talk was?

Mr. Herrick.— That is objected to as incompetent and immaterial.

The President.— I don't see that it is material unless there is some admission in it regarding the facts that are in issue here.

Mr. Stanchfield.— I understand it is highly material, if the Presiding Judge please.

The President.— I don't know. If you call his attention to it you may get that, but limit it.

By Mr. Stanchfield:

Q. What did he say upon that subject?

Mr. Herrick.— I object. What article of the impeachment is this addressed to?

Mr. Stanchfield.— Do you desire me to state what I expect to prove by him?

Mr. Herrick.— I ask you to state what article of the impeachment this testimony is directed to?

Mr. Stanchfield.— It is admissible, Judge Herrick, under every one.

The President.— You are gaining nothing by your questioning each other.

Mr. Stanchfield.— Not the slightest.

The President.— I sustain your objection. You have got to call him down right to the point.

By Mr. Stanchfield:

Q. What, if anything, Mr. Ryan, did he say to you, or ask you to do in regard to this trial?

Mr. Herrick.— That is objected to as incompetent and immaterial.

Mr. Stanchfield.— I submit that is a perfectly proper inquiry.

The President.— I will sustain the objection for the present. I may change the ruling.

By Mr. Stanchfield:

Q. Was there anything said in the course of that conversation between you in regard to your being a witness?

Mr. Marshall.— Objected to.

Mr. Herrick.— That is objected to.

The President.— Objection overruled.

Mr. Marshall.— That is not in any article. There is no allegation in any of the articles with reference to that subject.

The President.— This gets down to the question of this contribution again.

Mr. Marshall.— I assume it is for an entirely different theory, because the witness said nothing was said on the subject of contributions in that conversation.

The President.— The one in December?

Mr. Marshall.— I understood him to say a minute ago that there was nothing said in that conversation about the contribution. There is no allegation in regard to anything which relates to any other conversation in any of the articles.

Mr. Stanchfield.— Whether that be true or no, this testimony is certainly competent that I am asking.

The President.— On what ground? Tell the court and it may be with you.

Mr. Stanchfield.— To show the effort of the respondent to influence evidence in this case.

The President.— If it is influence evidence, but Senator Root knew nothing about that.

Mr. Stanchfield.— That is all right. We are way beyond that. The present inquiry with this witness is whether in that conversation between the witness and Governor Sulzer anything was said upon the subject of the witness testifying.

Mr. Marshall.— As to that, there is nothing in the articles with regard to the influencing of this witness.

The President.— That will admit it. No, but that is competent.

Mr. Stanchfield.— It would not have to be in the articles.

Mr. Marshall.— My contention is that if this is sought to be made a substantive ground of proceeding, it ought to be in the articles.

The President.— There are a good many things that are admissible in evidence. For instance, to show a man who is on trial, that he attempted to commit suicide, flight may be shown; it only comes in as evidence of that character.

Mr. Marshall.— The question is whether it would be original evidence, competent as original evidence.

The President.— I think it will be admitted, Mr. Marshall. Limit it to what you stated now.

Mr. Stanchfield.— You may answer now.

The Witness.— What is the question.

The President.— State it.

By Mr. Stanchfield:

Q. Was the subject of your being a witness, or giving evidence upon this trial, discussed at that time? A. He told me if I was subpoenaed before the Committee not to pay any attention to the subpoena, because they had no right to hold this trial.

Q. That was the Frawley Committee?

Mr. Herrick.— I ask to have it stricken out.

Q. Did you mean by that the Board of Managers? A. I mean by that when I asked him whether they subpoenaed me to bring me into the situation at all, what I should do.

Q. What was his reply? A. He said that they did not have any right to subpoena anybody.

Mr. Herrick.— We ask to have that stricken out, if the Court please, as incompetent and immaterial.

The President.— Motion granted.

By Mr. Stanchfield:

Q. Was there anything further said upon that subject? A. Upon the subject of this trial?

Q. Yes. A. Yes, sir.

Q. What was it? A. He wanted the — he said that he wanted the trial to be declared illegal; that they had no right to hold the trial; that an extraordinary session had no right to impeach him.

Q. Yes. A. He asked me to go to Washington —

Mr. Hinman.— If the court please, that is objected to. It has already been excluded.

The President.— Yes.

By Mr. Stanchfield:

Q. When you say he asked you to go to Washington, you are coming back to the original proposition with reference to seeing Senator Root or was it something else? A. You asked me to tell you what he spoke to me about regarding this trial.

Q. Yes. A. I was trying to tell you.

Q. Yes. Have you exhausted your recollection upon that subject? A. It is very clear in my mind what he said to me.

Q. Just finish it, complete it.

Mr. Hinman.— We again object to the testimony regarding the request or suggestion made by the respondent to the witness in reference to his going to Washington. The witness has been

asked the question, indicating the purpose of the visit, and the court has excluded the evidence.

The President.— Objection sustained.

By the President:

Q. Now, Mr. Witness, did he say anything to you on the subject of your testimony or what you were going to testify, or about? A. No, sir.

Q. Did he say anything about this $10,000 that the previous witness has testified to? A. No, sir; nothing more than I asked the question, which I answered here, I asked the question: "Suppose I am subpoenaed in this situation," and he told me that they had no right to subpoena me.

Q. Yes. A. I gave that testimony.

Mr. Stanchfield.— You testified to that?

Mr. Herrick.— We ask to have it stricken out again, if the Court please.

The President.— Granted.

Mr. Stanchfield.— Under the ruling, I am going to put what might otherwise seem to be a leading question, if the Presiding Judge please.

By Mr. Stanchfield:

Q. Didn't you have some talk at that time, or later, with Governor Sulzer upon the subject of trying to procure someone to influence the action of this Court?

Mr. Herrick.— That is objected to. That is incompetent, irrelevant and immaterial.

The President.— I think not.

Mr. Stanchfield.— I submit it is perfectly competent.

Mr. Herrick.— To any inquiry here.

The President.— I think not. I don't believe that is competent.

By Mr. Stanchfield.— It would be, if the Presiding Judge please, just as competent as it would be for me to show by the witness an effort upon the part of the respondent to influence, or shade, or distort in any way the testimony of a witness. It goes to the very gravamen of the charge against him, for a man to attempt to influence in any way the action of a court that has jurisdiction over his person or the subject-matter of an inquiry, is susceptible to just the same line and sort of proof as it would be to show interference with a witness.

The President.— I appreciate that certain testimony to that effect might be competent, but the trouble is you get so much in that has to go out the minute it is in.

Mr. Stanchfield.— I ask the specific inquiry —

Mr. Marshall.— (Interrupting.) May I ask the question with regard to that: Your Honor, can that be competent under any article of impeachment which we are here to try?

The President.— No, it is not on that ground, it is not as a substantive offense; it would be entirely and merely as corroborative evidence. Of course, it is not —

Mr. Stanchfield.— (Interrupting.) It is offered in line with the same testimony with reference to his desire to affect the testimony of witnesses.

The President.— Now, if you call his attention specifically to that and ask him —

By Mr. Stanchfield:

Q. Now, Mr. Ryan, did you have a talk with Governor Sulzer at the time and place of which you are now speaking, on the subject of endeavoring to influence the action of this court? A. Yes.

Mr. Herrick.— Now, that is objected to as incompetent and immaterial.

The President.— Objection overruled.

Mr. Stanchfield.— He says he did. Now, I ask him what did he say?

Q. Now, what was that talk?

Mr. Herrick.— Same objection.

The President.— Same ruling.

The Witness.— He asked to go to Washington to see Senator Root and request him to see Mr. William Barnes.

Q. Go right along? A. Get him to endeavor to have the Republican members of this body to vote that this Court had no right to try him and impeach him.

Mr. Herrick.— Now, I move to strike out that testimony. It is not within the line of your Honor's ruling. It is incompetent and immaterial, and particularly in advance —

The President.— I will hold it for a minute.

Mr. Herrick.— Particularly in advance of any defense on our part.

The President.— I think it will go out.

Mr. Stanchfield.— Your Honor will permit me to get the whole of the conversation before you finally rule?

The President.— If you get so much in, and then it will have to go out again. What more do you want?

Mr. Stanchfield.— From the standpoint of the Board of Managers, it bears very materially upon the intent of the respondent.

The President.— I don't think so.

Mr. Herrick.— The intent to do what? Commit any of these things charged in the impeachment articles?

The President.— I think the testimony will be sustained.

Mr. Herrick.— The testimony is stricken out then?

The President.— Yes. Anything else of this witness?

Mr. Stanchfield.— That is all, if your Honor please.

The President.— Cross examination?

Mr. Fox.— Will your Honor pardon us one moment? We are hesitating whether we ought not to express that some expression of disapproval on the part of the Court be made.

By Mr. Stanchfield:

Q. Have you had any other conversation with the respondent, Governor Sulzer, than this one of which you are now speaking, of last September? A. Another that afternoon.

Q. That is, of the same day? A. Yes, sir.

Q. Where did that take place? A. In the same place.

Q. His office? A. Yes, sir.

Q. Were you alone upon that occasion? A. Yes, sir.

Q. Now, did you have any talk with him at that time relating in any way to the subject-matter of this trial? A. Yes, sir.

Q. What was that conversation?

Mr. Herrick.— That is objected to.

The President.— It is sustained.

Mr. Herrick.— It seems to me, after you have so plainly indicated your idea of the proper line of testimony, the counsel persisting to try to get in these conversations which you declared to be incompetent and immaterial, that something should be done to correct it.

Mr. Stanchfield.— This is another conservation, if your Honor please.

Mr. Herrick.— Yes, on the same subject.

Q. Did you have any conversation with him at that time in regard to the contribution that had been made? A. No, sir.

Mr. Stanchfield.— That is all.

Mr. Herrick.— That is all.

Senator Brown.— Mr. President.

The President.— Senator Brown.

Senator Brown.— It is difficult to hear and I do not know whether I understood the language and the ruling of the Court

in relation to the last question that was stricken out. I would like to have it read.

The President.— Yes, stenographer, read that.

(The stenographer thereupon read the record as follows): "Q. Now, did you have any talk with him at that time relating in any way to the subject-matter of this trial? A. Yes, sir.

"Q. What was that conversation? Mr. Herrick.— That is objected to.

"The President.— It is sustained."

Senator Brown.—No, I refer to the testimony that was stricken out.

(The stenographer thereupon read as follows: "Now, what was that talk? Mr. Herrick same objection. The President Same ruling. The witness: He asked to go to Washington to see Senator Root and request him to see Mr. William Barnes. Q. Go right along? A. Get him to endeavor to have the Republican members of this body to vote that this court had no right to try him and impeach him. Mr. Herrick: Now, I move to strike out that testimony; it is not within the line of your Honor's ruling; it is incompetent and immaterial, particularly in advance — The President: I will hold it for a minute. Mr. Herrick: Particularly in advance of any defense on our part? The President: I think it will go out.")

The President.— That was stricken out.

Senator Brown.— With all due deference to the ruling of the President, in view of this matter having come up, I desire to move that it be allowed to stand on the record. I think opportunity should be had to sift such an inquiry to the bottom. This is a public trial; while I believe in adhering to the rules of evidence, so far as they protect the respondent, I think that it is due to the people of the State and due to the court that after such a matter has been brought out in a court, that there should be no flinching on the part of the court in relation to the inquiry. I therefore move that the ruling of the chair be not sustained.

The President.— Call the roll. On this, the question is shall the ruling of the Chair be sustained or not. Those who vote yes, exclude the testimony. Those who vote no, overrule or admit the testimony.

The Clerk.— Senator Argetsinger.
Senator Argetsinger.— No.

The Clerk.— Judge Bartlett.

Senator Blauvelt.— Will you state the question upon which we are voting, the precise point?

The President.— The question is whether the evidence that the respondent asked him to go to Senator Root and have Senator Root see Mr. Barnes, to get the Republican Senators to vote, shall go out.

Senator Blauvelt.— I understand that. The question is on the vote, what does the negative stand for, and what does the affirmative stand for.

The President.— If you vote yes, that excludes the testimony; if you vote no, it stays in.

Judge Bartlett.— I vote to sustain the Chair's ruling.

The Clerk.— Senator Blauvelt.
Senator Blauvelt.— No.

The Clerk.— Senator Boylan.
Senator Boylan.— No.

The Clerk.— Senator Brown.
Senator Brown.— No.

The Clerk.— Senator Bussey.
Senator Bussey.— No.

The Clerk.— Senator Carroll.
Senator Carroll.— No.

The Clerk.— Senator Carswell.
Senator Carswell.— Yes.

The Clerk.—Judge Chase.
Judge Chase.— Yes.

The Clerk.— Senator Coats.
Senator Coats.— No.

The Clerk.— Judge Collin.
(No response).

The Clerk.— Judge Cuddeback.
Judge Cuddeback.— Yes.

The Clerk.— Judge Cullen, President.
The President.— Yes.

The Clerk.— Senator Cullen.
(No response).

The Clerk.— Senator Duhamel.
Senator Duhamel.— Yes.

The Clerk.— Senator Emerson.
Senator Emerson.— Mr. President, not being a lawyer, and believing there should be some facts shown here, I vote no.

The Clerk.— Senator Fitzgerald.
(No response.)

The Clerk.— Senator Foley.
Senator Foley.— Yes.

The Clerk.— Senator Frawley.
Senator Frawley.— No.

The Clerk.— Senator Godfrey.
Senator Godfrey.— Yes.

The Clerk.— Judge Gray.
(No response.)

The Clerk.— Senator Griffin.
(No response.)

The Clerk.—Senator Heacock.
Senator Heacock.— No.

The Clerk.— Senator Healy.
Senator Healy.— Yes.

The Clerk.— Senator Heffernan.
Senator Heffernan.— No.

The Clerk.—Senator Herrick.
Senator Herrick.— Yes.

The Clerk.— Senator Hewitt.
(No response.)

The Clerk.— Judge Hiscock.
Judge Hiscock.— Yes.

The Clerk.— Judge Hogan.
Judge Hogan.— Yes.

The Clerk.— Senator McClelland.
(No response.)

The Clerk.— Senator McKnight.
Senator McKnight.— Yes.

The Clerk.— Senator Malone.
Senator Malone.—Aye.

The Clerk.— Judge Miller.
Judge Miller.—Aye.

The Clerk.— Senator Murtaugh.
Senator Murtaugh.—Aye.

The Clerk.—Senator O'Keefe.
Senator O'Keefe.—Aye.

The Clerk.— Senator Ormrod.
Senator Ormrod.—Aye.

The Clerk.— Senator Palmer.
Senator Palmer.— No.

The Clerk.— Senator Patten.
Senator Patten.—Aye.

The Clerk.— Senator Peckham.
Senator Peckham.—Aye.

The Clerk.— Senator Pollock.
Senator Pollock.—Aye.

The Clerk.— Senator Ramsperger.
Senator Ramsperger.—Aye.

The Clerk.— Senator Sage.
Senator Sage.— No.

The Clerk.— Senator Sanner.
Senator Sanner.— Aye.

The Clerk.— Senator Seeley.
Senator Seeley.— Aye.

The Clerk.—Senator Simpson.
Senator Simpson.— Aye.

The Clerk.— Senator Stivers.
Senator Stivers.— No.

The Clerk.—Senator Sullivan.
Senator Sullivan.— Aye.

The Clerk.— Senator Thomas.
Senator Thomas.— Aye.

The Clerk.— Senator Thompson.
Senator Thompson.— No.

The Clerk.— Senator Torborg.
(No response.)

The Clerk.— Senator Velte.
Senator Velte.— No.

The Clerk.— Senator Wagner.
Senator Wagner.— Aye.

The Clerk.— Senator Walters.
Senator Walters.— Aye.

The Clerk.— Senator Wende.
Senator Wende.— Aye.

The Clerk.— Judge Werner.
Judge Werner.— No.

The Clerk.— Senator Wheeler.
Senator Wheeler.— Aye.

The Clerk.— Senator White.
(No response.)

The Clerk.— Senator Whitney.
Senator Whitney.— Aye.

The Clerk.— Senator Wilson.
Senator Wilson.— No.

The Clerk.— Ayes, 32; noes, 18.

The President.— The ruling of the presiding judge is sustained and it will remain out.

Mr. Stanchfield.— Mr. Meany.

The Clerk.— You do solemnly swear that the evidence you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer, as Governor of this State, shall be the truth, the whole truth and nothing but the truth, so help you God.

The Witness.— I do.

The Clerk.— What is your full name?

The Witness.— Edward P. Meany.

EDWARD P. MEANY, a witness called on behalf of the managers, having been first duly sworn, in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Stanchfield:

Q. Mr. Meany, where do you reside? A. Convent, New Jersey.

Q. What is your occupation? A. Attorney and counselor-at-law.

Q. Where is your law office? A. 55 Liberty street, New York city.

Q. Are you acquainted with the respondent, William Sulzer? A. I am.

Q. How long have you known him? A. I recall him fully twenty years; fully twenty years.

Q. Have you kept up an acquaintance with him over that period of time? A. I have.

Q. You recall, do you not, his nomination for Governor in the fall of 1912? A. I do.

Q. With reference to his nomination, did you have an interview with him shortly after? A. Within a week or ten days after his nomination, Mr. Sulzer called upon me at my office, 55 Liberty street, New York.

Q. And did you there have a conversation with him? A. I did.

Q. On what subject? A. Mr. Sulzer informed me during that conversation that he needed financial assistance, and asked me if I would loan him some money.

Q. Asked you if you would loan him some money? A. Loan him some money, yes, sir.

Q. Yes, go ahead. A. I told him that I would. I asked him what amount he required. He said, "Let me have what you can afford to let me have." I said, "I will loan you $10,000; if you will call to-morrow or next day, I will give it to you."

Q. Is that the substance of the conversation? A. That is practically the substance of the conversation.

Q. When did you see him next? A. I saw him, I think, at the Executive Mansion in Albany on Lincoln's birthday last, the 12th of —

Q. I mean, when did you see him with reference to this $10,000 loan? A. A day or two afterwards.

Q. At your office? At my office.

Q. How did you give him that money? A. I gave it to him in cash.

By the President:

Q. By that, do you mean in bills? A. Bills, yes, sir, currency.

By Mr. Stanchfield:

Q. Bills of what denomination? A. Either $500 or $1,000 bills.

Q. Did you take any note from him? A. I did not.

Q. Did you take any written acknowledgment of any sort or description? A. I did not.

Q. To the effect that it was a loan? A. I did not.

Q. He was then a candidate for Governor? A. He was.

Q. And this was right in the midst of his campaign for that office? A. It was at the beginning of his campaign for that office.

Q. Do you keep books of account? A. I do.

Q. Did you enter up this item in any of your books? A. I did not.

Q. In other words, you made no entry of this loan in any book that you kept? A. I did not.

Q. You took no written acknowledgment of any sort or description in reference to it? A. I did not.

Q. Did you take at the time anything in the way of collateral? A. I did not.

Q. Have you had any correspondence with Governor Sulzer since? A. Yes, sir.

Q. Will you produce it, please? A. (Witness hands letter to counsel).

Mr. Marshall.— May we look at that letter?

Mr. Stanchfield.— Yes, I am about to offer it.

Mr. Marshall.— (After examining letter). We object to this letter as entirely incompetent, immaterial and irrelevant. We cannot understand any theory on which that letter can possibly be competent.

Mr. Stanchfield.— The letter speaks for itself; it does not require much argument, I suppose.

Mr. Marshall.— It does not at all. It has no bearing on any issue here.

The President.— (After examining letter). I do not see that it has any relevancy. I am not the only member of the court. I

sometimes forget and think it is like a jury. I suppose it ought to be read, though I cannot see that it has any effect.

Mr. Marshall.— That is the very thing that they want, to read a lot of incompetent matter and then have it stricken out later. That is just as they have been trying this case on statements and assertions and innuendoes and insinuations.

The President.— If any member of the court would like to look at it he may. If they ask for it they must have it. I am not the sole judge.

Mr. Herrick.—If every member of the court wants to look at it, we have no objection.

Senator Wagner.— To bring the question before us, I move the decision of the court be sustained.

Senator Simpson.— I second the motion.

The President.—All in favor of the motion say aye; all opposed no.

The motion was carried.

Mr. Stanchfield.— That is all of the witness, if your Honor please.

The President.— Now, they are finished. Of course you will now go on—does that end the case for the prosecution?

Mr. Stanchfield.— Yes, sir.

Senator Pollock.— If that last witness is still in the court room I would like to ask him one question.

EDWARD P. MEANY recalled.

By Senator Pollock:

Q. Mr. Meany, was that your own money that you loaned Governor Sulzer? A. Absolutely, sir.

Q. Why did you give him cash instead of a check? A. Because he preferred to have it in cash, and I preferred to give it to him in cash.

Q. Was there any reason that you can give us why you preferred to give it to him in cash? A. Most assuredly. I did not care to have it generally known that I had loaned my friend, Mr. Sulzer, money at that time, for fear it would be misunderstood and misconstrued.

Q. Can you tell us from what source this money came, $10,000? A. Yes, sir.

Q. Will you please do so? A. A check drawn on the Bankers Trust Company of New York by Mr. William S. James, one of my associates, in my office.

Q. On his own account? A. Mr. James cashed a check payable to his order.

Q. Mr. James' personal account? A. No, sir, it was a check upon my account, payable to the order of Mr. William S. James.

Q. Signed by you? A. Signed by me.

Senator Simpson.— Mr. President, I would like to ask the witness a question.

The President.— Yes.

By Senator Simpson:

Q. What, if anything, was said upon the subject of the duration of this loan, Mr. Meany? A. He said that he would pay it as soon as he could, and he hoped to do it in a very short time.

Q. Did you ever request this loan to be paid back to you? A. I have not.

Q. What, if anything, was said as to the rate of interest to be paid on this loan? A. There was nothing said as to the rate of interest.

Senator Thompson.— I would like to ask the witness a question.

The President.— Proceed.

By Senator Thompson:

Q. Will you please explain what you meant in answer to a question by Senator Pollock, that it might be misconstrued or

misunderstood; what did you mean by that? A. I mean that in loaning money to a friend, I do not desire it to be generally known that I have loaned money to a friend.

Q. What did you mean by that misconstruction; who would misconstrue it; what did you mean by that? A. I did not care particularly for my bank to know that I was loaning money to a friend.

Q. Are you in the habit of loaning money? A. Oh, yes, sir, quite often.

Q. What is your business? A. I am an attorney and counselor at law.

Q. And where do you generally practice? A. In New York city.

Q. Do you have any practice in Albany? A. None whatever.

Q. What is that? A. None in Albany, no, sir.

Q. Did you ever loan the Governor any money before or since? A. I think I have before, sir.

Q. Did he pay you back? A. Yes, sir.

The President.— That is all.

Mr. Hinman.— If the court please: The object and purpose of impeachment proceedings is to enable the people to rid themselves of public officials corrupt in office.

In the conduct of public affairs only men of high character and integrity should be elected but neither the Constitution nor the statutes make the right to hold office dependent upon these qualifications or characteristics. In this State the law imposes certain limitations upon the right to hold and continue in office. Such limitations are age, citizenship, residence, the taking of the constitutional oath of office and honesty and faithfulness in the discharge of official duties. There are no others.

The people have retained and hold unto themselves the absolute and unlimited right to select and elect to any office any person who possesses the legal qualifications. The man so selected has the absolute right to hold such office for his full term, provided he administers the duties of his office honestly, capably and faithfully.

The morals or private life of the officeholder — provided they do not affect the performance of his official duties — do not dis-

qualify him from holding office and cannot be made the ground for his removal. Were the rule otherwise, the people would have been deprived of the services of some of our greatest men and statesmen.

In the darkness of the early morning of August 13, 1913, the Assembly, by a bare majority and by nearly a party vote, voted to impeach the Governor of this State for acts alleged to have been committed by him.

These alleged acts may be divided into two general classes or kinds, namely, those committed while in office and in connection with the performance of official duties, and those committed before he came into office and while acting as a private citizen.

Those acts are set forth and are contained in eight articles of impeachment which are now before this Court. The evidence to sustain those charges on behalf of the Managers is now completed and the Managers' case in full is before this Court.

Before outlining the evidence to be submitted on the part of the respondent, we desire to call the attention of the Court to the nature of the charges and briefly to the evidence which has been submitted in support thereof.

The eighth article may be called the "Stock Exchange Article." It charges that the bills designed to make the stock brokerage business more honest were favored by the respondent in order — I now quote:

> "To affect the current prices of securities listed and selling on the New York Stock Exchange, in some of which securities he was at the time interested and in which he was speculating, carrying, buying and selling, upon a margin or otherwise, by first urging, recommending and pressing for passage legislation affecting the business of the New York Stock Exchange and the prices of securities dealt in on said Exchange, which legislation he caused to be introduced in the Legislature, and then, by withdrawing, or attempting to withdraw from the consideration of the Legislature such legislation which was then pending therein — all the time concealing his identity in said transactions, by subterfuge."

The article charges this to be a criminal offence, to wit, a violation of section 775 of the Penal Law.

The material parts of section 775 of the Penal Law are as follows:

> "Any person who while holding a public office, corruptly uses or promises to use, directly or indirectly, any official authority or influence in the way of conferring upon any person or in order to secure or aid any person in securing, any office or public employment, or any nomination, confirmation, promotion or increase of salary upon consideration that the vote or political influence or action of the person so to be benefited or of any other person, shall be given or used in behalf of any candidate, officer or party or upon any other corrupt condition or consideration * * * is punishable by imprisonment for not more than two years or by a fine of not more than three thousand dollars or both."

The mere reading of this section makes it clear that its provisions are limited to the corrupt use of official authority or influence in the way of conferring office, public employment, nomination, confirmation, promotion or increase or decrease of salary in favor of any person seeking or holding public office.

There is nothing alleged in this "Stock Exchange" article which charges and nothing in the evidence which tends to show, that the respondent gave or promised to give or to use any authority or influence or consideration for any vote for or in behalf of the legislation therein mentioned, or that he ever talked or communicated with any legislator in reference thereto, or that he ever made any promise to any one in connection therewith, or ever withdrew or attempted to withdraw from the consideration of the Legislature any of such legislation. The evidence shows that the respondent stopped his transactions in the stock market before he became Governor and not a single purchase or sale after January 1, 1913, has been proved.

There is no evidence which shows or tends to show that such legislation affected or tended to affect or could affect the prices of stocks. If the Court may be permitted to speculate upon the effect of such legislation the conclusion to be drawn by the Court would necessarily be that such proposed legislation, if it had any effect whatever upon the prices of stocks, would be to lower such prices. There is no evidence tending to show that the respondent's

investments were such that falling prices would benefit him. Hence, the conclusion is irresistible that the legislation proposed by the respondent in connection with this subject, if it had or could have had any effect on the market, was against his own financial interest.

Let me ask this question: Could a legislator be expelled for voting on a full crew bill because he owned stock in a railroad at the time, or voting on a labor bill because he owned a factory, or on a race track bill because he owned a horse or on a liquor bill because he owned a hotel or saloon? Do you say that such a question is ridiculous? It is not one which is more ridiculous than is this article VIII as the proof now stands.

This article VIII is absolutely unsupported by even a scintilla of proof. As at present advised, we shall not dignify it by submitting any evidence in relation thereto.

The seventh article is the "Big Stick" article. It charges the respondent with using the "Big Stick" on Assemblyman Sweet, for the purpose of getting their votes for his direct primary bill. It is based on the same section of the Penal Law as is the "Stock Exchange" article. The charge is that the respondent —

> "*promised or threatened* Hon. S. G. Prime, Jr., a member of Assembly from the county of Essex, * * * and Hon. Thaddeus C. Sweet, a member of Assembly from the county of Oswego."

The "promise" which it is alleged was made by the respondent to Assemblyman Prime was —

> "that if said Prime would vote for certain legislation in which said William Sulzer was interested and, as Governor, was pressing to passage, he, said Sulzer, would sign a bill that had already passed the Legislature and was pending before him, reappropriating the sum of about $800,000 for the construction of roads in said county of Essex and counties adjoining thereto."

The "threat" alleged to have been made by the respondent to Assemblyman Sweet was —

> "that if the said Sweet did not vote for certain legislation in which said William Sulzer was interested, and as Gov-

ernor, was pressing to passage, he, said Sulzer, would veto a bill that had already passed the Legislature and was pending before him, appropriating certain moneys for the construction of a bridge in said county of Oswego."

The only evidence in the case in support of the alleged "promise" to Assemblyman Prime is the two bills which were passed by the Legislature and signed by the respondent as Governor, reappropriating for highway purposes in the counties of Essex and Warren certain unexpended balances of moneys theretofore appropriated for the same purpose; you will remember these two bills were offered in evidence; the direct primary bill introduced by Assemblyman Eisner at the regular session, and at the extraordinary session which convened June 16, 1913; the messages of the respondent as Governor in support of such direct primary bills; and the evidence given on the stand by Assemblyman Prime.

Assemblyman Prime testified, in substance, that in a conversation which he and other citizens from the counties affected by the legislation had with the respondent while the bill was pending before the Governor, Mr. Cameron, said to the respondent, "Governor, we are down here on the highway measures affecting the counties of Essex and Warren. We are very anxious to get your signature to these bills" — or something of that nature; that the Governor turned to Senator Emerson and said, "Senator, you voted against my direct primaries bill;" that Senator Emerson then replied, "Yes, Governor, but I have a copy of your bill in my pocket;" that the respondent then said, "You had better read the bill;" that Senator Emerson then said, "I am going to read it, read it thoroughly, so that I can understand it;" to which the respondent replied, "Go back home and read the bill * * * and come back on Friday or Saturday and tell me how you feel as to the measure;" and that the Governor also said, "Well, I will see you on Friday," and as they turned to come out of the Executive Chamber the Governor made a statement, a remark to the effect that "You for me, I for you," and we went out. (See pages 887–8, printed record.)

This evidence of Assemblyman Prime shows clearly that no such promise as is alleged in this article was made by the respondent,

and that no bargain or arrangement of any kind in connection with that legislation was made or attempted to be made.

The Court probably noted that while the Managers' counsel had the report of Hon. John N. Carlisle, State Superintendent of Highways, reporting in favor of these so-called Prime bills marked for identification, the report was not offered or put in evidence.

No one who knows John N. Carlisle and his reputation for integrity and honesty will believe that that report was obtained from him as the result of any corrupt bargaining or manipulation.

No one who knows Senator Emerson, a member of this Court, or Assemblyman Prime will believe that they, or either of them, entered into, or that the respondent who knows them would for a moment suggest to either one of them that they make and enter into, a corrupt bargain or deal with him.

The only evidence in the case in support of the alleged "threat" to Assemblyman Sweet in connection with the Minetto bridge bill is the fact that the bill was passed by the Legislature; that it was before the Governor for signature; that it was desired by Assemblyman Sweet and by at least some of the people in his district; and the evidence of Assemblyman Sweet himself which will be found on pages 876–7 of the printed record, in substance, to the following effect:

That he went to see the respondent in reference to the Minetto bridge bill; that when he spoke to him about that bill the respondent said, "Assemblyman, how did you vote on my primary bill;" that he replied, "I voted against it;" that the respondent then inquired, "How are you going to vote in the extraordinary session?" to which the Assemblyman replied "According to the sentiment and in the interest of my district;" and that the respondent then laid his hand on the Assemblyman's arm, stroking it, and said, "See Taylor, Assemblyman, and smooth him the right way * * * and bring your bill to me, but remember, Assemblyman, I take good care of my friends."

The evidence on behalf of the Managers relating to this bill of Assemblyman Sweet and to the alleged "threat" is so weak and insignificant as to amount to nothing. It lacks not only any express threat, but also anything sufficient to authorize or justify

any inference that there was any threat of any kind intended, even by implication.

Surely it will not be urged before this Court by anyone that any of the things alleged to have been done or said in connection with these Prime bills and this Sweet bill is covered by or violates the provisions of section 775 of the Penal Law.

As has already been pointed out, the provisions of the section relate solely to the corrupt use of the official authority or influence of a public officer in the way of conferring upon any person or securing for any person public office or increase or decrease of salary in order to obtain support for any person or measure.

If the facts alleged in this "Big Stick" article and the facts proven in connection therewith constitute an impeachable offense, I venture the assertion that every Governor who has held office in this State, and every President of the United States for the past fifty years, has been subject to impeachment.

We submit and insist that Article 7, like Article 8, stands absolutely unproven and unsupported by any proof, and that the respondent is not called upon to give any evidence whatever in relation thereto.

Articles 3, 4 and 5 may be called the "Bribery" and "Criminal Suppression of Evidence" articles. They charge criminal offenses. The charge of bribery is that the respondent

> "fraudulently induced one Louis A. Sarecky, one Frederick L. Colwell and one Melville B. Fuller each to withhold true testimony from said Committee, Frawley Committee, which testimony it was the duty of said several persons named to give to said committee when called before it and which under said inducement of said William Sulzer they, and each of them, refused to do,"

in violation of the provisions of section 2440 of the Penal Law.

The charge of criminal suppression of evidence by the respondent is that he

> "practiced deceit and fraud and used threats and menaces, with intent to prevent said committee and the people of the State from procuring the attendance and testimony of certain witnesses, to wit, Louis A. Sarecky, Frederick L. Colwell and Melville B. Fuller and to prevent such persons,

they severally being cognizant of facts material to said investigation being had by said committee, from producing or disclosing the same, which said several witnesses named, and many others, failed and refused to do,"

in violation of section 814 of the Penal Law of the State, and that the respondent

"wilfully prevented and dissuaded a certain witness, to wit, Frederick L. Colwell, who had been duly summoned or subpoenaed to attend as a witness before said committee hereinbefore named for the 8th day of August, 1913, from attending pursuant to said summons or subpoena,"

in violation of section 2441 of the Penal Law.

Section 814 of the Penal Law provides that:

"A person who maliciously practices any deceit or fraud, or uses any threat, menace or violence, with intent to prevent any party to an action or proceeding from obtaining or producing therein, any book, paper or other thing which might be evidence, or from procuring the attendance or testimony of any witness therein, or with intent to prevent any person having in his possession any book, paper or other thing which might be evidence in such suit or procedure or to prevent any person being cognizant of any fact material thereto from producing or disclosing the same, is guilty of a misdemeanor."

Section 2440 of the Penal Law provides that:

"A person who gives or offers or promises to give to any witness or person about to be called as a witness, any bribe, upon any understanding or agreement that the testimony of such witness shall be thereby influenced, or who attempts by any other means fraudulently to induce any witness to give false testimony or to withhold true testimony, is guilty of a felony."

Section 2441 of the Penal Law provides that:

"A person who wilfully prevents or dissuades any person who has been duly summoned or subpoenaed as a witness from attending, pursuant to the summons or subpoena, is guilty of a misdemeanor."

We shall not argue on the question, but it is open to serious doubt, whether the Frawley committee had any jurisdiction or authority to issue subpoenas to compel the attendance of or the giving of evidence by any witness, or whether any person would be guilty of any crime in dissuading or procuring or advising any witness not to appear or not to give evidence before that committee.

The only evidence which has been submitted on behalf of the Managers in support of any of the "bribery" and "criminal suppression of evidence" articles is the stenographer's minutes of certain questions put to and answers made by the witness Sarecky when he appeared before the so-called Frawley committee, the testimony of Melville B. Fuller, the witness who, it is alleged, was bribed not to appear before the committee and not to give evidence before it; and the testimony of John Boyd Gray as to a conversation which he had with Frederick D. Colwell in August, 1913, just before Mr. Colwell left the city of New York.

As to the witness Louis A. Sarecky, the evidence shows that he appeared before the Frawley Committee. It shows that when called as a witness before that committee, he said:

> "Now gentlemen, I want to make a statement on record before I testify further. If you are delving into the Governor's campaign expenses, I am willing to tell everything, on condition that I be represented by counsel because if the story is to be told, I want both sides told." (Printed record, page 1036.)

The evidence shows that thereupon the Chairman of that committee interrupted Mr. Sarecky and stated: "Mr. Sarecky, if Mr. Richards asks you any question that you feel you won't answer, you have a right to refuse;" and that witness then stated "I feel that the Committee has absolutely no authority at all to conduct the investigation." (Printed record, page 1037.)

There is nothing in the record to show that the respondent ever talked with or ever sent any message to or communicated directly or indirectly with the witness Louis A. Sarecky on the subject of his appearing or refusing to appear, or of his giving or refusing to

give testimony before the Frawley committee, or, for that matter, on any subject whatever.

Sarecky was, with the approval of the respondent, appointed on July 18, 1913, to the office of lay member of the Board of Deportation of Alien Insane. But this appointment was made by the State Hospital Commission, and with the approval of the State Civil Service Commission. There is nothing to show or which warrants an inference that the appointment had any connection with the giving or withholding of evidence by Sarecky, or that the respondent and Sarecky ever had any conversation directly or indirectly in reference thereto.

The papers have been full of statements alleged to emanate from the Board of Managers, or rather from the Chairman of the Board of Managers, to the effect that Louis A. Sarecky had fled the jurisdiction of and was endeavoring to avoid appearing before, this court. The fact is, and will be proven, and such fact was well known to the Board of Managers, that Mr. Sarecky has been at his place of business and his rooms in Albany continuously during the progress of the trial, or at his office in New York City, or registered under his own name at the Iroquois Hotel in the City of Buffalo, and that his whereabouts were well known to all persons connected with the prosecution, and that he was subpoenaed on behalf of the Board of Managers and has been in this Court for several days ready to be called as a witness on behalf of the Board of Managers.

As to the witness Melville B. Fuller, it appears that he suggested to the respondent rather than that the respondent suggested to him, that he and his firm felt that they owed it to all their customers not to voluntarily disclose their business affairs except by consent of such customers, unless ordered so to do by the Court; that instead of the respondent bribing or attempting to bribe, threatening or attempting to threaten, or inducing or attempting to induce, Mr. Fuller not to appear and testify, the respondent simply suggested that if he, Mr. Fuller, desired to test the question of the power of the committee to compel the attendance of witnesses and the disclosure of their business affairs, he, the respondent, would furnish an attorney, which offer was refused.

The evidence establishes that thereafter Mr. Fuller appeared before the Frawley Committee and that it was then and there stated to the Committee by Judge Olcott on behalf of Mr. Fuller:

> "I want to say a word on the subject of his refusal to answer questions the other day, and the fact that he now presents himself ready to answer all questions which are asked of him. His refusal the other day was based upon the custom, which is to them a law and a moral right of brokers, never to reveal any of their books so far as their customers' accounts are concerned. Since that we have had a conference with Governor Sulzer and his representatives, and the Governor agrees that, without further contest, without any contest on his part, that Mr. Fuller's lips should be unsealed. Now, having that waiver from the customer, Mr. Fuller feels at liberty to answer your questions." (Printed record, page 968.)

The evidence establishes that thereupon Mr. Fuller presented to the Committee all the books, papers and documents of the firm of Harris & Fuller, of which he was a member, for their inspection and use, and that he fully and frankly answered every question put to him by the attorney for that Committee. Also, that thereafter he again appeared before this Board of Managers, producing all such books, papers and documents, and submitted himself to examination, answering fully and truly all questions put to him and furnishing all information asked for, and that for days his books, papers and documents have been in Albany subject to the inspection and use of the counsel to the Board of Managers; his courtesy being rewarded by insinuations that the prosecution's own witness was not honest in his business affairs.

As to the witness Frederick L. Colwell, there is no evidence of any kind which shows that he was ever subpoenaed or requested to appear before the Frawley Committee or that his presence there was desired or that he refused to appear or that he did not so appear and give evidence. Neither is there any evidence that the respondent had anything to do, directly or indirectly, with Colwell in that regard.

Considerable interest was excited during the prosecution's pres-

entation of its side of this case, both in court and through the newspapers, by insinuations that the attendance of John Boyd Gray as a witness could not be obtained by the Board of Managers, but the court must have observed that no attempt was made to produce any proof on the part of the Board of Managers of any attempt whatever having been made by them to compel the attendance of John Boyd Gray. It was shown that he has daily been at his place of business in New York City during the progress of the trial. He appeared here, apparently voluntarily, and went upon the stand.

To summarize: We assert that there is no evidence in the case supporting or tending to support, even by inference or by speculation, any allegation contained in any of the articles numbered 3, 4 and 5.

When these articles of impeachment were first presented, counsel for the respondent with their knowledge of the facts believed, and now they are convinced, that there were no facts or fact upon which those three articles could be founded or supported. We believe then and now we know, that the "Big Stick" article, the "Stock Exchange" article, the "Bribery" article, and the "Criminal Suppression of Evidence" article, being articles 3, 4, 5, 7 and 8, were written into these articles of impeachment by some lawyer who knew his business and who knew enough to know that under all precedents and under the law the jurisdiction of this court could only be obtained and maintained on articles of impeachment charging mal and corrupt conduct in office by this respondent, and who knew enough to know that the articles of impeachment, unless supported by and floated into this court upon a raft constructed with one or more planks charging misconduct in office, could not live.

This proceeding is a great proceeding; great not because it involves the reputation and the future of the respondent and all that he can hold dear, but because of the greatness of the office involved and because of the public interest therein. Such a proceeding, from its inception to its end, and every step therein, ought to be conducted upon the highest plane.

Methods that might be adopted and that might be justified in

an ordinary "horse" lawsuit ought not to be adopted or tolerated in a proceeding of this character.

Although there is an entire lack of evidence in support of any one of these five articles of impeachment, and although there is not in the case anything from which even an inference can be drawn in support of the allegations therein contained, it is equally true that this case from the beginning up to the present time has been filled with insinuations and innuendoes which were not only unjustified and misleading but which, of necessity, tended to befog the case and to divert the attention not only of the court but of the public as well from the real issues involved.

Take for instance: In the examination of Melville B. Fuller in connection with the entries in the books of the firm of Harris & Fuller, where it was broadly hinted that the books of the firm of Harris & Fuller were crooked; that there have been concert of action between the respondent and the members of that firm, to make the transaction appear upon the books different from what it really was, in order to aid the respondent in this case.

You will remember how the book was paraded through the court, and exhibited to all the members of the court. But not until two days later, a sufficient length of time to allow the unjust and unjustifiable insinuation to have accomplished its purpose, was the concession made in open court that there was no foundation in fact for the insinuation.

We had another similar exhibition in connection with the testimony of John Boyd Gray. Judge Beale was examined for some half hour, not in reference to any fact in issue in this case, but in reference to the whereabouts of his client, Mr. Gray. There was nothing in his testimony which indicated that Mr. Gray was concealing himself, or avoiding the service of a subpoena. In fact, the contrary appeared. Mr. Gray voluntarily appeared the next day as a witness for the prosecution. He testified that he had been at his various places of business in New York during the entire progress of the trial.

The calling and examination of Judge Beale was a play to create the impression in the minds of the public that Mr. Gray was avoiding the service of subpœna, at the instigation of the defense, because his evidence would be injurious to the defense.

The same innuendo was made regarding Louis A. Sarecky, that his attendance as a witness was very greatly desired by the prosecution, and that he could not be found. As a matter of fact, Mr. Sarecky has been about his business in the open during every day of the trial. He was subpœnaed on behalf of the prosecution, and has been in court awaiting their call every day for several days. He was not only not called as a witness by the prosecution, but they never intended to call him. This fact appears from the statement made by counsel for the prosecution, which will be found on page 1031 of the printed record, and which was as follows:

> "Mr. Stanchfield.—You must not take it from that (referring to a statement by counsel for respondent that the prosecution had had Sarecky under subpœna for several days) that the board of managers intend to call him and make him their witness."

Speaking for myself alone, frankness compels me to say that I was greatly disappointed in the action of the court in reserving or postponing its decision on the motion made on behalf of the respondent to dismiss articles 3, 4, 5, 7 and 8. However, this court, in its wisdom, has seen fit to decree otherwise. To that decision, we, of course, are compelled to submit.

Believing as we do, and as at present advised, we shall submit but little, if any, evidence in relation to any one of these five articles. As we view it, it is not a question of the "probative" force or value of the evidence, but a case where there is an utter lack of evidence supporting the charges, or from which any inference against a respondent can legitimately be drawn. We will leave those articles, with the evidence or the lack of evidence relating thereto, for the court to pass upon at such time as to it seems advisable.

Unlike the alleged acts set forth in the other articles, every act alleged in the articles of impeachment numbered 1, 2 and 6, to have been committed by the respondent, is stated to have been committed by him prior to January 1, 1913. None of them is claimed to have been committed while the respondent was in office, but, on the contrary, while the respondent was a private citizen, although at a time when he was a candidate for office.

These articles, 1, 2 and 6, and the allegations therein contained, relate to moneys alleged to have been received by respondent while a candidate for the office of Governor, and to the statement, as such candidate, he made and filed in the office of the Secretary of State on or about the 13th day of November, 1912.

Article 6 is the "larceny" article. It charges the respondent with "stealing" moneys donated to him by friends during his campaign. It alleges a violation of the provision of sections 1290 and 1294 of the Penal Law. Criminal intent is the basis of this charge, not only by the form in which the alleged crime is set forth, but by the statute as well.

The allegation is that various persons "contributed" money and checks to the respondent, as "bailee, agent or trustee." It is certain, however, that if respondent received such moneys, or any of them, as bailee, as agent or as trustee, he became bailee, agent or trustee for himself alone, and for no other person. There was not, and is not under the evidence, any person in existence who has the right to, or who can, hale the respondent into court, either in a civil or criminal case, and compel him to account for his agency or trusteeship. The moneys were not only contributed but they were given to William Sulzer, the title thereto vested in him, and he became the owner thereof.

In the case of Wadd v. Hazelton, 137 N. Y. 215, the question presented was whether there was an absolute gift or a declaration of trust. Peckham, J., writing for the court, at page 219, used this language:

> "While it is true that no particular form of words is necessary to create a trust of this nature, and while it may be created by parole or in writing, and may be implied from the acts or words of the persons creating it, yet it is also true that there must be evidence of such acts done or words used on the part of the creator of the alleged trust, that the intention to create it arises as a necessary inference therefrom, and is unequivocal; the implication arising from the evidence must be that the person holds the property as trustee for another."

There is nothing in the evidence in this case which shows that any of these donations were trust gifts. The most that can be

claimed on the part of the prosecution is that some of the donors indicated at the time the donation was made, and in connection therewith, that the donation was for campaign expenses or campaign purposes. There is nothing, however, in any of the language contained in any of the communications written by the donors at the time the donation was made, or in the conversations which the donors had with the respondent at the time when they delivered their donations to him, which created a trust.

In volume 20 of the Cyclopædia of Law, at page 1213, under the title "Conditional Gifts," is the following statement of principle:

> "Where a party makes a gift upon certain conditions and the donee violates the conditions, or refuses to perform them the donor may revoke the gift upon such violation or refusal on the part of the donee."

Even if it were to be held that any of these donations or contributions were "conditional gifts," and that they were made upon the "condition" that they could be used only for "campaign expenses," that does not aid the prosecution. If that were the situation, no one in the world except the donor has any cause or ground for complaint. The only right or remedy which the donor would have under such a construction of the terms of the gift would be to revoke the gift, demand the return of the donation or contribution, and, in the event of the refusal of the donee to return such donation or contribution, to bring a civil action to recover the same.

There is not, and cannot possibly be, any element of a criminal offense involved in such a transaction.

Notwithstanding all the ability and all the industry of all the counsel of the Frawley committee, of the Board of Managers and of the prosecution in this case, they have been unable to find, or at least to produce before this Court, a single person who has made any complaint or raised any question regarding the use to which the respondent put any of such moneys or checks.

Suppose that one of us, walking up Broadway, in the city of Albany, is met by a human derelict, and he tells you, and he tells you — or whoever it may be — that he has not had his breakfast

and wants a quarter for breakfast, to get something to eat, and you give him the quarter, and he spends it in some saloon. Does he thereby become a thief?

Even if this court were to ignore all the precedents of hundreds of years, as well as the law of the State, and were to hold that a public official can be impeached for acts committed while a private citizen, and while not acting in an official position, it cannot be that it will permit itself to be made a court for the determination of what constitutes good ethics, good form, or good taste.

The case now on trial is unique and novel in one respect. It is not claimed or even hinted in the articles of impeachment that the respondent or his friends corruptly or improperly used any money or thing whatever in aid of his election. It is not alleged or claimed that any corruption of the electors of the State was attempted, nor that any bribery was practiced.

On the contrary, it is alleged that moneys which were contributed to the respondent, and which he might have used to aid him in securing the high office for which he was a candidate, were not so used, but were used by him for other purposes which in themselves were proper both in law and in good morals. In other words, that the use to which he put the money would prevent — tended to prevent his being elected to this high office.

If the claim here were that the respondent used money corruptly or improperly in aid of his election, and that such corrupt or improper use of funds had aided the respondent in obtaining the office, then it might be urged with some reason that the respondent ought not to be permitted to hold an office which he had obtained in such a way. Then it might be argued in some pretense of earnestness that the principle established in the Gudin case could be applied. Then there might be some foundation for or justification of the claim that the respondent had come into his office through a vestibule of corruption, and so ought not in good morals to be permitted to continue to hold such office.

We know of no case where impeachment proceedings have ever been instituted to impeach a public officer for bribery, or the corrupt use of money in aid of his election.

Of course, there are cases where legislative bodies have expelled their members because of the corrupt use of moneys in connection with their election; but in those bodies the law provides that they are the sole judges of the qualification of their members. It is here sought to impeach the respondent, not because he corruptly used money in aid of his election, but because he did not use to obtain the office some of the moneys which he had received during the period of his candidacy.

To urge the impeachment of a public official because he did not use money in aid of his election is so unreasonable as to be almost ludicrous. We venture the assertion that were it not for political exigencies, such a thing would never have been conceived or even dreamed of.

Article II is the "Perjury" article. The facts set forth in it do not constitute perjury or a criminal offense as a matter of law.

Section 1620 of the Penal Law defines perjury as follows:

> "A person who swears or affirms that * * any * * affidavit * * by him subscribed is true * * or who willfully and knowingly testifies, declares, deposes or certifies falsely, in any material matter, or states in his * * affidavit * * any material matter to be true which he knows to be false, is guilty of perjury."

The proof in this case will show that at the time when the respondent made the affidavit referred to in Article II, he acted in good faith.

The section of the Penal Law defining perjury makes the crime dependent upon the "materiality" of the matter sworn to.

The affidavit made by the respondent, and upon the making of which this article of perjury is based, and must abide, is as follows, and I read the affidavit so that the court may have it in mind:

> "State of New York,
> City and County of New York, } ss.
>
> William Sulzer, being duly sworn, says that he is the person who signed the foregoing statement, that said statement is in all respects true, and that the same is a full and

detailed statement of all moneys received, contributed or expended by him directly or indirectly, by himself or through any other person, in aid of his election.

(Signed) Wm. Sulzer.

Sworn to before me this 13th day of November, 1912.

(Signed) Alfred J. Wolff,
Commissioner of Deeds,
No. 72, New York City."

In order for the court to hold that in the making of this affidavit the respondent committed the crime of perjury, it must be made to appear not only by a preponderance of the evidence but beyond a reasonable doubt that the respondent did not act innocently and in good faith, but that he acted, as the article charges, willfully and corruptly, knowing the affidavit to be false, and, further, that the statements contained in the affidavit to the effect that it constituted a statement of all moneys received by the respondent directly or indirectly was a material matter and required by law to be included therein.

An examination of the statute relating to the making and filing by political committees and candidates for public office of statements of election expenses, demonstrates that the matter of legislation in this State has not been reduced to a science. Such statutes are almost hopelessly muddled. I see my good friend Senator Brackett smiling, which I think indicates that I was at one time a member of the Senate with him, and therefore charges me with a part of this. I doubt that anyone, unless it be this court, can say with any degree of certainty just what the various statutes relating to this subject mean. The matter is dealt with not only in the Penal Law but in the Election Law as well. In both places the same subject, relating to the same persons, is attempted to be dealt with. Section 776 of the Penal Law relates to the filing by candidates for public office of a "statement of expenses." That is the heading of the section. It provides, and now I quote:

"Every candidate who is voted for at any public election held within this state shall, within ten days after such

election, file, as hereinafter provided, an itemized statement showing in detail all the moneys contributed or expended by him directly or indirectly, by himself or through any other person, in aid of his election. * * * There shall be attached to such statement an affidavit subscribed and sworn to by such candidate, setting forth in substance that the statement and affidavit subscribed and sworn to by such candidate, setting forth in substance that the statement thus made is in all respects true and that the same is a full and detailed statement of all moneys so contributed or expended by him directly or indirectly, by himself or through any other person in aid of his election."

And then provides that any candidate for office who refuses or neglects to file a statement as prescribed in this section shall be guilty of a misdemeanor.

It is to be noted and to be constantly kept in mind that this section of the law, which deals solely with the matter of the filing by a candidate for public office of a statement of his expenses, does not require, even by implication, that such statement shall contain any thing or matter with reference to moneys contributed to the candidate. It deals only with moneys contributed or expended "by" the candidate.

It will also be noted and constantly kept in mind that it is not alone the successful candidate who is required to make such statement and such affidavit.

It has been proven by the testimony of the witness Adams, an employee in the office of the Secretary of State, that the form of the statement and affidavit to be made by candidates for public office was prepared, and that such forms are furnished by the Secretary of State.

Turning now to the statement and affidavit made by the respondent, and which is in evidence here, and which as I recall, has not been exhibited to the members of the Court so that they have examined it — you will find that the Secretary of State has caused to be printed, and there is printed upon such form — I am speaking now of the form that was verified by this respondent, and which is here in question — there is printed upon such form

and as a part thereof, this section 776 of the Penal Law in full, and that there is nothing on such blank forms which refers or directs the attention of the candidate or person making the statement and affidavit to any other statute or provision of law anywhere requiring anything else to be contained in or made a part of such statement.

Section 546 of the Election Law, and let me say here that is the form that is sent out and has been sent out to all candidates for office throughout the State, that is the form upon which each member of this Court since 1906, in any event, and I think long before that, has made a statement, that he has used one of the Secretary of State's blanks.

Section 546 of the Election Law deals with this same subject, but in a blind and involved manner. The material parts of that section are as follows:

> " The treasurer of every political committee which, or any officer, member or agent of which, in connection with any election receives, expends or disburses any money or its equivalent, * * * shall within twenty days after such election, file a statement setting forth all the receipts, expenditures, disbursements and liabilities of the committee * * * in each case it shall include the amount received, the name of the person or committee from whom received, the date of its receipt, * * * " etc.,

and then at the end of the section appear these words:

> " The statement to be filed by a candidate or other person not a treasurer shall be in like form as that hereinbefore provided for, but in statements filed by a candidate there shall also be included all contributions made by him."

It will be noted and at all times kept in mind that the statement of campaign expenses or payments required to be made by this section 546 of the Election Law is not required to be sworn to or verified. In that one respect the law is perfectly clear and explicit. There is no uncertainty or ambiguity in the law in regard to that.

One fact stands out which cannot be gainsaid or controverted, and that is that under the law this respondent was not required

to verify or swear to any statement of moneys contributed to or received by him in aid of his election. The most that can be claimed in that regard is that he was required by this section 546 of the Election Law to file an unverified statement of such moneys.

If the true construction of the provisions of section 546 of the Election Law be that a candidate for public office is required to file an unverified statement of the moneys contributed to or received by him in aid of his election, within twenty days after the election, it must be held that no penalty attaches for a failure to comply with that provision.

Every one knows, and the Legislature in enacting the provisions of the Corrupt Practices Law must have taken into consideration the fact that any candidate for office may have paid to him, or may receive moneys which cannot strictly be termed campaign moneys or moneys to be used for campaign purposes. The law expressly permits certain moneys to be used and paid in aid of election for which no accounting need be made. Probably that is why the Legislature did not impose any liability on a candidate who failed to make and file any statement of moneys paid to him in aid of election.

Section 550 of the Election Law provides that if any person or committee fails to file the statement or accounting " as above required," or files a statement which does not conform to the foregoing requirement in respect to its truth, sufficiency and detail or otherwise, the filing of such statement or account may be compelled by order in proceedings for contempt, and the procedure is provided by law for compelling compliance with such an order.

Under this condition of the law, we submit that the court must hold that the respondent was not required by any statute to verify any statement of the moneys contributed to or received by him in aid of his election or otherwise, and that the statement in the affidavit made by him on November 13, 1912, to the effect that the statement to which such affidavit was attached was a true statement of all moneys received by him, directly or indirectly, in aid of his election, was, therefore, immaterial, even if he had known that such statement was included in such affidavit, and even though he had not acted innocently and in good faith.

Our position, therefore, is, and to the end, will be, that under the law and the facts this "Perjury" article must be dismissed.

If this court is to hold that every candidate elected to public office can be impeached because of his failure to comply with the requirements of these statutes or because his statement is not accurate and true, then, what man is there in office to-day who is not liable to impeachment?

Does not this very thing demonstrate how wise and just are the precedents and the law that limits impeachable offenses to mal and corrupt conduct in office?

If to these offenses you are to add offenses committed in the imaginary "vestibule" or office, where shall the vestibule be erected, how wide shall it be built, and how far back into the distant past shall it be made to extend? A distinguished citizen of this country has been in the vestibule to office on at least three occasions, the highest office in the land. He has had his hand upon the door knob of office, stood there in that vestibule, that imaginary vestibule, three different times. Suppose that on any one of those occasions he had been guilty of some offense or of some corruption in the vestibule, can he be or could he be, if he were a candidate again, and succeeded in opening and entering the door, be impeached for offenses committed in the vestibule of office years and years ago? There is yet to be made the law that impeachment lies for mal and corrupt conduct in an imaginary vestibule to office.

One of my associates has suggested that this vestibule of office proposition advanced is a carpenter made law, but I would not suggest it.

Article 1 is the "False Statement" article. It charges the willful and intentional making of a false statement by the respondent concerning his campaign expenses, in that he intentionally omitted therefrom moneys contributed to and received by him during his campaign. It does not charge any crime or any criminal offense.

While no particular statute is referred to in this article by chapter, title or section, a reference is made to a statute as set forth in the article and the statute set forth is the language of section 546 of the Election Law. A comparison of the phrasing

of the first paragraph of article 1 with the phrasing of section 546 of the Election Law will show that the language of that section has been used almost verbatim in the article, consequently that section must be the statute referred to in that article in the use of the language, and I quote not, "statute above set forth," which is in the article, and the court must necessarily so hold. When we come to compare and examine this article 1 with section 546 of the Election Law, you will see that that is a correct statement.

Article 1 is the only article which does not purport to charge a criminal offense. It charges that the campaign statement which the respondent made and filed was not true, that is, that the respondent intentionally lied, and that, having lied, he has shown himself to be unfitted to hold office and should be removed.

The answer to this article, and the reason why it does not allege an impeachable offense, was well and convincingly stated by Senator Brackett. At page 316 of the printed record he said:

> "This is no trial for disgusting manners, nor for lack of dignity, nor for immeasurable boastings — all of these may be offensive to the last degree, but they are not in the charges here, nor likely impeachable. The defendant is charged with crimes."

In order to enable the court to fully understand the circumstances surrounding and attending the making by the respondent of his statement of campaign expenses on November 13, 1912, we expect to show the following facts:

On October 3, 1912, the respondent was nominated by the Democratic State Convention at Syracuse for the office of Governor, and was elected to that office on November 5th by the largest plurality ever given a candidate for public office in the State.

The respondent is a plain, affable man, easy to approach, and a man who, until the year 1913, never made enemies.

He has never had any business education or experience. Practically all of his time since in the '80's has been taken up with his duties as a legislator, either in the Assembly of the State or in the House of Representatives. While a lawyer by profession,

about the only evidence of that fact, as one witness stated it, is that he had a law office. He never kept books of account or records of his transactions. He is exceedingly careless and unmethodical. Details are something to which he is almost a stranger. During the campaign several clerks, stenographers and assistants were employed in and about the respondent's office at 115 Broadway, New York city, among them being his secretary, Louis A. Sarecky, Roy K. Weller, Charles Horowitz, Matt Horgan, who later became the secretary to the Frawley investigating Committee, Mr. Hanify and Mr. Delany, who is now Commissioner of the Department of Efficiency and Economy.

As you all know, it is customary in these days, particularly in the city of New York, for a candidate for any important office to have a personal campaign committee. Soon after the close of the Convention at Syracuse, it was talked over by some of the respondent's intimate friends who were connected with or were frequenters of the respondent's offices, that a campaign committee should be organized to look after the respondent's personal campaign and matters connected therewith. Colonel Alexander Bacon was first suggested for the chairmanship of that committee, but because he would have to be away much of the time campaign speaking, it was finally decided that Ex-Governor Spriggs should act in that capacity and Mr. Sarecky was made the secretary and treasurer thereof. The organization of the committee was very informal.

During the campaign the respondent was away a considerable portion of the time. On the 17th and 18th of October he was on a speaking trip through the Hudson valley as far north as Troy. From October 20th to 30th he made a speaking tour of the State. Between the 30th of October and election day, November 5th, he made a tour of Long Island. In the meantime he delivered many speeches in and about the city of New York.

While he was at his office during the campaign, the office was crowded with callers and practically all of his time was taken up with conferences and interviews. His mail during that period was enormous. It was an utter impossibility for him to give any time or attention to the details of his campaign or of his office. Of necessity that work was performed by others, and particularly

by Mr. Sarecky, who had been in his employ for many years. Mr. Sarecky was thoroughly reliable and a man in whom the respondent placed implicit confidence, as he had a right to do.

It is generally well known that the salary of Governor in this State is not enough to properly support the office. During his work in Congress the respondent had endeared himself to many well-to-do people of the City of New York, as well as to many other people who had come to know and to love him. These friends and well-wishers of the respondent desired to do something for him. Their feeling was personal to him and was not a matter of party concern or party principle. It has been shown in this case that Republicans were included among those friends, and that the respondent was the only Democrat they supported.

During the campaign the respondent received donations, gifts and loans from many of those friends and acquaintances, some of them being small and some of them large. Some of these were in cash and some by check. The respondent, knowing the sentiment and feeling of the donors toward him, believed, and had a right to believe, that such gifts were intended for himself personally, to be used by him in aid of his election if needed, and if not so needed, in any other way that would assist him.

The respondent received these gifts, making no effort to keep them separate from his own moneys or to apply them to any definite or specific purpose. Some of these donations were made to him in person, some by messenger, some through the mail, some were delivered at his residence, some at the office and some directly to Mr. Sarecky. You will remember that this already appears, the manner in which that was done.

Some of these gifts were deposited by the respondent in his bank account and in the Farmers Loan & Trust Company, where they have ever since remained, and where they still are. It was there that the Elkus and Morgenthau checks were deposited. Some of these gifts were turned over by the respondent to Mr. Sarecky, and some of whom were turned over to the respondent's wife.

Some of these gifts were made to respondent by friends who were in the brewing business. The insinuation has been made that these were not included in the statement made by the respondent because of a desire on his part to conceal the fact that brewers

were contributing moneys to him. The evidence shows that the donation of the brewer W. J. Elias not only went into the Sarecky bank account in the Mutual Alliance Trust Company, but that it is reported in the statement made by the respondent.

Furthermore, the deposit slips produced by the prosecution of deposits made by Mr. Sarecky in his account in that trust company show that some of the other checks received from brewers were likewise so deposited, the names of the brewers appearing upon the deposit slips.

Some of the checks so received by the respondent were finally used in payment of the purchase price of certain stocks bought of the firm of Boyer, Griswold & Company. It is claimed here that the stock was purchased of Boyer, Griswold & Company secretly, and that the purchase of such stock and the payment therefor was handled in a secret way in order that it might not be known that the respondent had any connection therewith. This claim is made in the face of the fact that the checks used in payment to Boyer, Griswold & Company of that stock were, with one or two exceptions, checks made to the order and endorsed in the name of the respondent, and one of them was the personal check of the respondent.

Had there been any wrongful intent or purpose in connection with these transactions, or any desire to conceal the same, it is certain that such checks would never have found their way into any brokerage house, and gone through the banks of the city of New York with their endorsements thereon.

Besides the donations which have been testified to by the prosecution's witnesses, there were others. In addition to that, and during the same period, we expect to show that the respondent borrowed considerable sums of money and that he had received other moneys from other friends before his nomination which were not given to him for any purpose connected with his campaign.

After the election was over, Mr. Sarecky learned for the first time that it was necessary for a political committee to make a report of the moneys used by the committee during the campaign, and also learned for the first time that upon the organization of a political committee the law required a notice of the election of the

officers of the committee to be filed with the Secretary of State. No such notice having been filed, the question arose as to how the report could be made. Thereupon Mr. Sarecky informed the respondent that the committee could not make a report because of its failure to file such notice, and the respondent suggested that he make it. The statement was thereupon made out by Mr. Sarecky, with the assistance of Mr. Horgan.

Some of the data which Mr. Sarecky had been keeping during the campaign, of moneys received and disbursed, had disappeared so he was obliged to make up the statement in part from the recollection of himself and Mr. Horgan. Having made up the statement, he took it to the respondent in his private office for signature. The respondent inquired "Is it all right?" to which Mr. Sarecky answered, in substance, "It is as nearly accurate as I can make it." Whereupon the respondent, without any examination of the document, and in reliance upon the assurance thus given him by Mr. Sarecky, signed his name thereto.

Thereupon, Mr. Sarecky went to the office of House, Grossman & Voorhaus at the other end of the hall and requested Mr. Wolff to take the respondent's affidavit. Mr. Wolff accompanied Mr. Sarecky to the respondent's private office for the purpose of taking his affidavit. Mr. Wolff has testified that when he entered the anteroom of the suite of offices occupied by the respondent, the respondent's private office was at the right, in which direction he went. The proof will show that the private office was at the left.

Mr. Wolff has testified that as he entered the respondent's private office he turned to the left, and that the respondent was at his desk at the left of the door through which Wolff entered. In this he is again in error because the respondent's desk was at the right of the door as one enters the private room.

Wolff has testified that the respondent was sitting at a desk on the left hand side of the room, with its back against the wall. In this he is also in error, the fact being that the respondent's desk stood against the right hand wall, with one end against the wall, so that the back of the desk was toward a person entering the room.

Mr. Wolff has testified that in taking the affidavit of the respondent he not only asked if the affidavit subscribed by respond-

ent was true, but that he then read to the respondent certain clauses of the affidavit, particularly the clause to the effect that the statement contained an itemized "statement of all moneys received" by the respondent. In this regard he testified untruly because nothing of the kind occurred. Everyone familiar with the manner in which affidavits are taken, and who heard Mr. Wolff's testimony, must have known that his testimony in that regard was untrue.

Wolff testified that at the desk of the respondent and in the respondent's private room he subscribed his name to the affidavit. In this he was wrong. He and Mr. Sarecky only went inside the respondent's private room where Wolff inquired of the respondent if that was his signature to the statement, and, receiving a reply in the affirmative, congratulated the respondent on his election to office, stepped back into the anteroom and subscribed this affidavit at Mr. Sarecky's desk. Mr. Sarecky then enclosed the statement in an envelope and mailed it to the Secretary of State.

This Court, in accordance with the provisions of the statute, has specified and adopted the questions upon which it is finally to pass in this case. These questions, in substance, are:

1. Is the respondent guilty?
2. If guilty, should the respondent be removed from office?
3. If guilty and removed from office, should the respondent be disqualified from ever again holding public office?

While we have no doubt concerning the correctness of our contention that under all precedents and under the law, the respondent cannot properly or legally be impeached for acts done while a private citizen and outside of his office as Governor, we have no right, of course, to anticipate what the action of this Court is to be on that proposition.

If this Court were finally to decide against the respondent on the question whether acts done as a private citizen and before entering office are impeachable offenses and were to find the respondent guilty by a two-thirds vote on any one of the articles, it would then pass to the second question, which is, "Shall the respondent be removed from office?"

In considering and determining that question, what factors or elements are to be considered? Our position on that question is that the welfare and best interests of the State and of its people must be the main consideration; that what the respondent was or was not, and what he did or did not do before he became Governor, is of minor importance. The great question would then be, what has he done and what has he failed to do, what has he tried to do and what has he tried not to do, as Governor? Did he as a private citizen before he became Governor do anything for which he should be removed from office?

If his administration on the whole has been in the interest of the people of the State — if what he has done and has been attempting to do as Governor has been in accordance with the solemn promise which he made when he took his official oath of office — if what he has done and attempted to do is to rid the governmental departments of the State of graft and grafters (if graft and grafters exist) — if the public welfare will be promoted by a continuance of the investigations which he had instituted and which were in progress before his impeachment and which have been suspended during and because of his impeachment, and which will, in all probability, not be resumed if he be found guilty and be removed — then surely he ought not to be impeached and ought not to be removed from office because of any acts done by him before January 1, 1913, whether they be acts of omission or of commission.

Saul and his friends were engaged for years in the work of persecuting and killing off Christians. On one of his trips to Ephesus he saw the light. From that day on he divorced himself from his former friends and faithfully discharged the duties of discipleship. From that day on his former friends became his enemies and his persecutors, but they did not attempt to impeach him or his epistles because of what he had done while acting with them and while one of them. When, in the nineteen centuries, has voice been raised to condemn Paul or his epistles for his acts as Saul?

In determining the questions before it, this Court must necessarily take into consideration the question of the public good. In

case it finds the respondent guilty, it must determine whether he ought to be removed. That involves the motives which led to this impeachment, that is, as to whether or not the proceeding and the result sought to be obtained are in the true interest of the public.

The question must be, and is, was the respondent impeached because of "mal and corrupt conduct in office," for crimes and misdemeanors, or was he impeached because of what he refused to do since he took office?

Was the proceeding instituted because of a desire to accomplish a public good or was it for the purpose of getting rid of a public official who was performing his duty? Was the respondent impeached because, as they say, for "mal and corrupt conduct in office," or because of honest conduct in office? Was he impeached, as they say, for "stealing" the moneys which his friends gave him, or was it because he was preventing grafters from stealing the moneys of the taxpayers? Was he impeached because, as they say, he made a false oath, or was it because he refused to violate his official oath of office?

These are some of the questions which the public are expecting this court to answer and which this court, under the questions to be voted upon, will have to answer. Upon their answer, we believe, depends quite largely the future welfare and interests of the State.

In all that we have done and in all that we shall do in this case, we have endeavored and will endeavor to assist the Court to the best of our ability in arriving at a just and right conclusion of this matter.

We are living in strange days. There has never been a time within my recollection when there was such a spirit of unrest and uneasiness on the part of the people generally. The time is surely coming — indeed, it may be near at hand — when we as a people must demonstrate whether our form of government with an almost unlimited elective franchise can endure. We cannot escape the feeling that what is done here and now may have a tremendous influence on the determination of that question.

We consider it of the utmost importance that what is done here and now should not only be well and rightly done, but that

it should be done in such a manner as to convince the people of the State that it has been so done.

I thank the Court.

Mr. Herrick.— May it please the Court: Our first witnesses to be examined were to be examined by Senator Hinman, who is more conversant with the testimony he expects to elicit than any other counsel, and I ask an adjournment until to-morrow morning so he may be prepared for it.

The President.— Is there no other witness you want to call? Of course we want to be as lenient with each side as possible, but we don't want to lose time.

Mr. Hinman.— We don't want to lose time.

The President.— Is there any other witness you can put on the stand?

Mr. Hinman.— I don't think of any now.

The President.— You see it often takes a good deal of time to put in even formal proof.

Mr. Herrick.— We have no formal proof to put in that would occupy any time at all. The examination of the first witness we will put on will necessarily be a lengthy one both on direct and I apprehend on cross examination. Mr. Hinman has now been talking something over an hour and a half and he is pretty well exhausted, and I am not prepared to examine this witness myself.

The President.— Well, gentlemen, I am disposed to let you take the time as far as I am concerned. Now, at 10 o'clock we must go on to-morrow and we will expect a whole day's work to be done.

Mr. Herrick.— We will make up the hour.

The President.— Very good, unless some gentleman thinks the Presiding Judge is too lenient, why, well —

Mr. Herrick.— We have not found you over-lenient so far.

The President.— Give notices to the witnesses.

The Crier.— All witnesses excused until to-morrow morning at 10 o'clock. Hear ye, hear ye, all persons having any further business before this Court of Impeachment, held in and for the State of New York, may depart hence and appear here to-morrow morning at 10 o'clock, to which hour this Court now stands adjourned.

Whereupon, at 5.10 o'clock, P. M., the court adjourned to meet again on Tuesday, October 7, 1913, at 10 o'clock A. M.

SENATE CHAMBER,

ALBANY, N. Y., *October* 7, 1913.

Purusant to adjournment the Court convened at 10 o'clock a. m.

PRESENT:

Hon. EDGAR M. CULLEN, Presiding Judge,
and
THE JUDGES OF THE COURT OF APPEALS,
and
THE SENATORS OF THE STATE OF NEW YORK.

APPEARANCES:

THE MANAGERS:
Same as heretofore.

Counsel for the Managers:
Same as heretofore.

Counsel for the Respondent:
Same as heretofore.

The President.— Call the roll.

The Clerk thereupon called the roll and found that there was a quorum present with the following absentees:

Judge Gray.
Senator Fitzgerald.

The President.— Open Court, Crier.

The Crier.— Hear ye, hear ye, hear ye, all persons having business before this Court of Impeachment held in and for the State of New York, give their attendance, and they will be heard.

Mr. Stanchfield.— We were requested, if the Presiding Judge please, to produce Mr. Ryan here this morning in order that some further questions may be addressed to him.

Mr. Marshall.— We have not determined as to what we will do as to that. We do not care for him at this moment.

The President.— Mr. Marshall, I cannot hear you.

Mr. Marshall.— We are not at this time desirous of calling Mr. Ryan.

Mr. Stanchfield.— I said we, speaking for the Board of Managers, were notified last night to produce Mr. Ryan here in order that some further questions might be addressed to him; whether it is from the body of the Court or counsel upon the other side, I am not definitely advised.

Mr. Marshall.— I thought you referred to me.

Mr. Stanchfield.— Mr. Ryan, take the stand.

The President.— Nobody apparently asks for him. Mr. Ryan, you remain in Court for the present. Did any of the Senators request that this witness be put on the stand again?

Senator Brown.— Mr. President, we cannot hear what is going on.

The President.— Did any of the Senators request that Mr. Ryan be put on the stand again. Counsel for the Managers stated that they were requested to produce that witness in Court again this morning, and they appear to be unable to state from what source the request proceeded. The counsel for the respondent repudiates the request as coming from them.

Mr. Marshall.— No, that is not exactly correct. I state we had requested them to have him here so that we could cross-examine him further if we desired, but we are not at this time prepared to cross-examine or to have him put upon the witness stand.

Mr. Stanchfield.— It was Mr. Marshall himself, Mr. Kresel advises me, who made the request.

Senator Brown.— I would like to inquire if it is the purpose to have Mr. Ryan take the stand now.

Mr. Marshall.— We are not certain as to that at the present time. We are conferring on that subject.

Senator Brown.— Then I move that the Court go into executive session for the purpose of reconsidering the ruling yesterday, in

relation to the admissibility of certain testimony given by the witness Ryan.

The President.— It seems to the presiding judge that, if the question is to come up again for discussion, it better be in executive or secret session, call it what you may, I have forgotten the term applied to it.

All those in favor of going into executive session —

The Clerk.— Private session.

Mr. Stanchfield.— Private consultation.

Senator Blauvelt.— I second the motion.

The President.— All those in favor of going into executive session, say aye.

Opposed, no.

Carried.

Whereupon, the Court of Impeachment went into executive session.

At the end of the Executive Session, the President made the following statement:

The President.— The vote of the Court yesterday sustaining the ruling of the Presiding Judge — striking out from the record the evidence of witness Ryan that the respondent had asked him to go to Senator Root to have him see Mr. Barnes to see the Republican Senators— holding that the Court had no jurisdiction; and excluding the evidence, is reconsidered, and it is directed that evidence remains in the record.

OPEN SESSION RESUMED.

The President.— Gentlemen, the Court, after further consideration, has decided that the evidence given by the witness Ryan, as to what the respondent said to him about going to see Senator Root, shall remain in the record, instead of being stricken therefrom. Therefore, the witness Ryan will immediately resume the stand, so as to see if any further questions are to be put to him.

ALLAN R. RYAN, recalled.

Examined by Mr. Stanchfield:

Q. Mr. Ryan, was there anything more said in the conversation that you had with the respondent, Governor Sulzer, at the interview in which you were requested to communicate with Senator Root, than what you have already testified to? A. Yes, sir.

Q. Will you give it, please? A. I suggested to Mr. Sulzer that now that certain charges had been made against him, that I did not see how he could afford to put himself in a position that he would put himself in, if he did not answer those charges.

Mr. Herrick.— That we ask to have stricken out, if the Court please, as incompetent and immaterial.

The President.— Objection overruled. Ask him what he said further.

Q. What further, Mr. Ryan? A. He said that his reason was that he did not want to drag his wife into the situation and put her on the stand.

Q. Was there anything further said? A. I told him that I would not go to Washington, but that I would try to ascertain the Republican sentiment on that question, as to whether the Court had a right to impeach him.

Q. That conversation took place at this interview of which you are speaking, in the forenoon? A. Yes, sir.

Q. Is that all the conversation? A. No, sir.

Q. Tell me what else was said? A. He said that if they voted that the trial was not legal he could then come and make a statement, come out with a statement and explain the situation satisfactorily. Those are not exactly his words, but that is the gist of the conversation. This conversation took place over a period of about an hour.

Q. You are giving, to the best of your ability, are you, the language when you can recall it, and when you cannot recall it, the substance? A. Yes, sir.

Q. Was there any more of the conversation than what you have related? A. I do not understand the question.

Q. Was there anything more of the conversation than you have told us? A. Nothing more than I said that I would try to ascertain the sentiment of the Republican members of the Court.

Q. Have you now, Mr. Ryan, related, to the best of your ability, all of the conversation you had with Governor Sulzer upon that occasion? A. Yes, sir.

Q. Did you, in conformity with that conversation, make any effort to ascertain the Republican sentiment or position upon that question?

Mr. Herrick.— That is objected to as incompetent.

Mr. Stanchfield.— I am not now, if the Presiding Judge please, going into details. I am asking whether he made any effort.

The President.— We will submit that question to the Court. Those that are in favor of admitting it, please say yes.

Those opposed, no.

Senator Herrick.— May we have the question repeated?

Mr. Stanchfield.— I asked him if he made any effort, after that conversation, to ascertain the Republican sentiment upon that question. I am not asking for the conversation.

The President.— All in favor of admitting it please say yes. All opposed, no.

It will be admitted.

Mr. Herrick.— May the witness be instructed to answer yes or no?

The President.— Yes. Just say whether you did or did not. Whether you did anything? A. Yes.

By Mr. Stanchfield:

Q. Came there a time when you saw Governor Sulzer later? A. Yes.

Q. When, and I direct your attention now to this conversation that you have already given us, when with reference to that conversation did you see him again? A. Three o'clock that afternoon.

Q. Now, did you see him at the same place? A. Yes.

Q. Did you have another conversation with him at that time? A. Yes.

Q. Did you at that time have any talk with him upon the subject of what, if anything, you had done to ascertain the Republican sentiment upon that question? A. Yes.

Q. Did you have with you at that time any notes or memoranda or paper of any kind relevant to that subject? A. Yes.

Q. Did you read the contents of that paper to Governor Sulzer? A. I either read it or he read it.

Q. Did he take in his possession the paper that you had? A. Yes, sir.

Q. Did he read it? A. He took it with him.

Q. Have you a copy of it? A. Yes, sir.

Q. With you? A. Yes, sir.

Q. Produce it please. (Witness produces paper, but hesitates about handing it to counsel).

The President.— I think I shall have to follow the ruling of the majority of the court.

Mr. Stanchfield.— I have not offered it yet. I asked him to produce it first.

The President.— He must produce it.

Senator McClelland.— We do not hear the Presiding Judge as to the suggestion on the evidence.

The President.— He asks him to produce it. The Witness hesitated to produce it. I said that in accordance with the opinion of the majority of the Court I thought I ought to direct him to produce it and give it to counsel. Give it to counsel.

(Witness hands paper to Mr. Kresel).

The President.— Is that an answer to your inquiry, Senator McClelland?

Senator McClelland.— Yes, sir.

(Mr. Stanchfield and Mr. Kresel read the paper together).

Mr. Stanchfield.— Do you want to look at it (handing paper to Mr. Herrick who examines it with Mr. Marshall).

Mr. Herrick.—We have no objection.

Q. At the time, Mr. Ryan, when you handed this paper which you have produced in response to my request to Governor Sulzer, was there any conversation between the Governor and you as to the source from which this paper came? A. I supposed he inferred where it was supposed to have —

Q. No, I cannot ask you that. A. I do not know how to answer.

Q. Your suppositions are not evidence. What I ask you is, was there any talk between you when you handed him this paper as to where it had come from, or who was the author of the sentiments upon it.

Mr. Marshall.—Answer yes or no.

A. I believe there was.

Q. What was said on that subject? Do you follow my inquiry? What was said on the subject as to who prepared or wrote or was responsible for the contents of this paper? A. I did not tell him who wrote it.

Q. Had there been any talk between you as to who you were to get in touch with to ascertain Republican sentiment? A. I called up, from his room, a friend of mine.

Q. In his presence? A. In his presence, and asked him, this friend, to meet me at my office. I did not say what it was about, why I wanted to see him. I do not think he knew who I called up.

Q. You did then make an appointment in Governor Sulzer's office to see a friend of yours? A. Exactly.

Q. You did go and see that friend? A. He came to my office.

Q. He came to your office? A. Yes, sir.

Q. And did that friend hand you later or at that time this paper of that day? A. I asked him to dictate exactly what he had to report to me, and he dictated that in my presence. That is not the original paper.

Q. Now, when you saw Governor Sulzer in the afternoon and handed him this paper, what, if anything, did you say to him as to where the paper came from or where you got the information appearing upon it?

Mr. Herrick.— He says he did not tell him. He has answered that.

Mr. Stanchfield.— I know.

By the President:

Q. Did you say anything? A. Nothing further that I can recollect than that I had obtained this information and I believed it to be correct.

Mr. Stanchfield.— Now, I will read this in evidence.

"The best I can get is as follows:

"First.— That only elected members of the court of appeals will sit in the High Court of Impeachment. The appointed members will be excluded.

"Second.— That the judges will maintain the legal fact that the Assembly can come together, at any place, at any time, and at its own option, or at any given call, even that of a citizen, if it wishes to, and a proper quorum being present, may present articles of impeachment against any official of the State for whom it has that authority.

"Third.— That no process exists in the law that is operative against the High Court of Impeachment or any way hereof, in other words, no restraining order will be in anyway regarded.

"Fourth.— The Republican Organization, as such, will do nothing. It will give no advice or order. It will leave every member to act upon his own judgment. The Chairman says distinctly that he will not permit anybody, high or low, to speak to him on the subject."

By Mr. Stanchfield:

Q. Now, Mr. Ryan, I have called your attention to that portion of your talk with Governor Sulzer in the afternoon, that deals with the exhibit I have just offered in evidence. Did you have further talk with him that afternoon? A. Yes, sir.

Q. Will you relate what further conversation you had with him?

Senator Wagner.— I would like to suggest, if I may be permitted —

The President.— You will speak louder, please?

Senator Wagner.— I suggest that the question be amended to any other talk with reference to this proceeding.

The President.— Yes, you will follow the suggestion.

Mr. Stanchfield.— I will follow the suggestion.

Q. Mr. Ryan, did you have any further talk, in your conversation of the afternoon, with Governor Sulzer, in reference to these proceedings, or this court of impeachment? A. Yes, sir.

Q. Tell us what it was? A. I suggested to him the advisability of resigning and then making a statement.

Q. What else was said, and I wish you would follow my question. What else was said upon the subject of in any way affecting these proceedings, or this court of impeachment, in that conversation? A. He asked me to do certain things.

Q. What did he ask you to do? A. He asked me to see Mr. Delancy Nicoll.

Q. What did he ask you to see Mr. Delancy Nicoll for? A. To see if he could not carry out the same idea that he expressed to me in the morning.

Q. Well, in what way — that is, did he say in what way? A. He said that Mr. Nicoll could see certain parties.

Q. And do what? A. And possibly persuade them to do what he wished to accomplish by having me see Mr. Root, and having him see Mr. Barnes. That covers the conversation.

Q. In this conversation —

The President.— He doesn't mean that exactly. You say —

The Witness.— Would accomplish the same end.

The President.— You said to see Mr. Barnes. You didn't mean that?

The Witness.— No, to accomplish the same end. Your Honor, this conversation took nearly two hours.

The President.— What you meant was that Mr. Nicoll was to see the Senator.

The Witness.— No, sir.

Mr. Stanchfield.— I will get at that in just a moment.

The President.— Ask him about that.

Mr. Stanchfield.— I will.

Q. In that conversation, did he name any particular party or parties that he wished you to request Mr. Nicoll to see? A. Yes, sir.

Q. Whom did he name? A. Mr. Murphy.

Q. And which Mr. Murphy? A. Mr. Charles Murphy.

Q. What did he say to you, if anything, in that conversation that he wanted you to ask Mr. Nicoll to say to Mr. Murphy? A. It was on the same lines he wanted to accomplish.

Q. I don't want conclusions. I want you to tell me what the language was as nearly as you can give it, and where you cannot give the language, Mr. Ryan, give the substance of the conversation? A. He wanted this procedure stopped.

Q. Yes, and what else? A. He wanted the Court to vote that the Assembly did not have the right to impeach him or try him.

Q. What else did he ask Mr. Nicoll to say to Mr. Murphy? A. He asked me to get Mr. Nicoll to do these things.

Q. Yes, but I want the whole of the talk that you had with him as to what you were to get Mr. Nicoll to do and say to Mr. Murphy?

The Witness.— I have answered that, your Honor.

The President.— Well, is there anything more?

Q. Just a moment, Mr. Ryan. I am asking you to tell us. Will you follow me please. I am asking you to tell us what Governor Sulzer asked you to say to Mr. Nicoll. No conclusions. Just what did Governor Sulzer ask you to say to Mr. Delancy Nicoll? A. He wanted me to have Mr. Nicoll persuade Mr. Murphy to endeavor to call off this inquiry by getting his following to vote that the Court had no right, the Assembly had no right, to vote his impeachment.

Q. There was more than that said, was there not? A. (No response.)

Q. There was more than that said in the conversation, was there not?

The President.—If you recall anything, say so; and, if you cannot recall any, say so.

A. He said Mr. Nicoll could be the go-between.

Q. Yes. Won't you go right along and finish that conversation? A. That he was willing to do whatever was right.

Q. That is, that who was willing to do whatever was right? A. Mr. Sulzer.

Q. What further was said in that conversation upon the subject of what was doing right? A. I don't recall anything further.

Q. Do you recall anything that was said beside what you have already testified to? (No response.)

Q. In other words, at this moment are you able to recollect anything more that he told you to say to Mr. DeLancey Nicoll? A. No, sir.

Q. Was there anything said in that talk as to what you were to say to Mr. DeLancey Nicoll, by Governor Sulzer, as to whether or no he had any certain number of votes in the Legislature on that question?

The President.—You mean the Legislature, the Assembly or the Court?

Mr. Stanchfield.—I mean the Court. Any certain number of members of the Court, on that subject? A. Yes, sir.

Q. Now, if I have refreshed your recollection as to that, tell me what he said on that subject? A. He said he had ten Democratic votes.

Q. When he said he had, do you mean that Governor Sulzer said he had ten Democratic votes? A. Yes, sir.

Q. Now, did he tell you in that talk upon what proposition he had those votes? A. No, sir.

Q. What did he tell you, if anything, to say to Mr. Nicoll that would be done if Mr. Murphy would get the Democratic members to vote on this question as he wanted? A. I answered that question.

Q. Well, what was it, in substance? Just again, please, if you have already? A. That he would do whatever was right.

Q. Did he specify in any particular what he would do as being right, as you call it? A. No, sir.

Q. Is there anything more to that conversation that you now recall? A. Regarding Mr. Nicoll?

Q. Yes. A. No, sir.

Q. Did you, as a matter of fact, Mr. Ryan, see Mr. DeLancy Nicoll? A. No, sir.

Q. Did you have any communication with him upon the subject? A. No, sir.

Q. As a matter of fact, did you see Senator Root? A. No, sir.

Q. Did you have any communication with him upon the subject? A. No, sir.

Q. Now, it is a fact, is it not, common knowledge, that Senator Root had been a long time your father's counsel? A. Yes, sir.

Q. And Mr. DeLancy Nicoll had also been one of your father's counsel, had he not? A. Yes, sir.

Q. Now, in this last conversation to which I have been calling your attention, in which you were requested to see Mr. Nicoll, what reply, if any, did you make to Governor Sulzer? A. I told him I would see what I could do, and I went out in the country and forgot it.

Mr. Stanchfield.— You may cross-examine.

Mr. Herrick.— Have you got through entirely?

Mr. Stanchfield.— Yes.

Mr. Herrick.— That is all.

Mr. Stanchfield.— That is all, Mr. Ryan.

The President.— Any further inquiry on the part of any member of the Court? (No response.)

The President.— That is all, witness. Now, gentlemen for the respondent.

Mr. Herrick.— Mr. Beardsley.

The Clerk.— You do solemnly swear that the evidence you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer, as Governor of this State, shall be the truth, the whole truth and nothing but the truth, so help you God.

The Witness.— I do.

The Clerk.— What is your full name?

The Witness.— Samuel A. Beardsley.

SAMUEL A. BEARDSLEY, a witness called on behalf of the respondent, having been duly sworn in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Herrick:

Q. Mr. Beardsley, you are an attorney and counselor at law? A. Yes, sir.

Q. Residing in Utica? A. Yes, sir.

The President.— Witness, they cannot hear you at all.

The Witness.— I will try and speak a little louder.

Mr. Herrick.— You talk to those ladies up in the gallery and then all the members of the Court will hear you.

The President.— The officers will see that quiet is kept in the gallery. Let conversation cease.

Q. And having an office in the city of New York? A. Yes.

Q. Do you know Governor Sulzer? A. Yes, sir.

Q. How long have you known him? A. 25 years.

Q. Do you recall his nomination for the office of Governor? A. Yes, sir.

Q. Did you see him thereafter, and have a conversation with him in relation to a contribution?

Mr. Stanchfield.— That calls, I suppose, for an answer, yes or no.

Mr. Herrick.— Yes.

A. I do not recall whether I saw him or not.

Q. Did you have a conversation with him in relation to a contribution? A. I did.

Q. When? A. If the Court please, just at this point I desire to raise the question of privilege. Whatever I did I did as attorney for a client, and if I am to testify I prefer to do it by order of the Court than otherwise.

Mr. Herrick.— I do not suppose that tendering a contribution to a candidate is law business; no question of privilege can arise upon that.

The President.— Out of it a great deal of law has sprung now, so that I am not prepared to say that. He may have asked him his advice.

Mr. Stanchfield.— This inquiry is simply addressed to a question of time. This whole discussion is irrelevant, as to when it took place.

The President.— I do not see any harm in answering it. You may answer it but do not say what it was.

The Witness.— I had a conversation, as near as I can put it, about the 22d or 23d of October. It was over the telephone. I was in New York. Governor Sulzer was in Albany.

Q. Was that conversation in relation to a contribution? A. It was.

Q. Was there an offer of a contribution made at that time?

Mr. Stanchfield.— Wait a moment. We object to that testimony.

The President.— On what grounds?

Mr. Stanchfield.— Upon various grounds, if the Presiding Judge please.

First, upon the ground that the declarations of respondent to the counsel, when it is alleged a contribution was being had or offered, and whether accepted or refused, is incompetent. It is hearsay and there is no foundation laid for its introduction.

The President.— Let me ask. Is this one of the contributions named in the articles or which has been the subject of proof on the part of the Managers?

Mr. Stanchfield.— Emphatically no.

The President.— Then really it refers to the other side —

Mr. Herrick.— This respondent has been depicted before this Court as going around with his hat in his hand almost, begging contributions for his personal benefit, showing more activity in gathering in contributions than in gathering in votes. We propose to show this man rejected contributions of large amounts, refused to accept them. Now certainly that has some bearing upon the charge that is made here that he was soliciting contributions from people for his own personal benefit.

The President.— My impression is that it is not competent. We will have a ruling of the Court, because I suppose there are other cases.

Mr. Herrick.— I wish it distinctly understood just what we propose to show.

The President.—Yes.

Mr. Herrick.—We propose to show that Mr. Beardsley offered a contribution of $25,000 and he refused to take it.

The President.— I do not exclude that on the ground of the relation of counsel and client because anyway that is the client's privilege and not the privilege of counsel. If client is willing to waive the privilege, and I suppose you are acting for the client and he waives it, but I doubt whether it is material here in another instance with which he is not charged, but I will ask a vote of the Court on it.

Mr. Herrick.— In response to a suggestion of the Court, you say showing other instances which are not charged. You will recall that you have allowed the prosecution to prove other instances of contributions that were given that were not set out in the articles.

The President.— But that was on one point. The question then was material and the question was whether these contributions which have not been acknowledged were omitted by mistake or not, but I do not see this evidence bears on that.

This is a matter of considerable importance and I will take a vote of the Court on that.

Judge Collin.— Mr. Presiding Judge, I move that the objection to the question asked be sustained.

Senator Wagner.— I second the motion.

The President.—All in favor say aye; opposed, no.

Call the roll, Mr. Clerk.

Senator Wagner.— The question is shall the Chair be sustained?

The President.— Well, to get to the practical result, yes, excludes the testimony; no admits it.

Judge Chase.— I think there is some question about the vote up to this time.

The President.— Will you speak louder, please.

Judge Chase.— I think there is some question about the vote up to this time, and I think it should be restated and start the roll over again.

The President.— Now, so that you will get the exact point: The counsel for the respondent has asked the witness about an offer of a contribution, and he states that he wants to prove by that, a contribution for a large sum, I think $25,000, was offered to the respondent, and he declined to take it. The Presiding Judge was of opinion that that was not competent as testimony, and now the question is: shall the ruling of the Presiding Judge be sustained or not? If you vote yes, you exclude that testimony; if you vote no, you hold it in.

Mr. Brackett.— If your Honor will put the question shall the decision of the Chair stand as the decision of the Court, I think they will get it.

The President.— Yes keeps that testimony in, and no holds it out.

The Clerk.— Senator Argetsinger.

Senator Argetsinger.—Aye.

The Clerk.— Judge Bartlett.

Judge Bartlett.— Mr. President, I feel a great deal of doubt as to whether this testimony is admissible, but I desire to give the respondent the benefit of that doubt; therefore, I vote no.

The Clerk.— Senator Blauvelt.

Senator Blauvelt.—Aye.

The Clerk.— Senator Boylan.

Senator Boylan.—Aye.

The Clerk.— Senator Brown.

Senator Brown.—Aye.

The Clerk.— Senator Bussey.

Senator Bussey.—Aye.

The Clerk.— Senator Carroll. (No response).

The Clerk.— Senator Carswell.

Senator Carswell.—Aye.

The Clerk.— Judge Chase.

Judge Chase.— Nay.

The Clerk.— Senator Coats.

Senator Coats.— Aye.

The Clerk.— Judge Collin.

Judge Collin.— Aye.

The Clerk.— Judge Cuddeback.

Judge Cuddeback.— No.

The Clerk.— Judge Cullen, President.

The President.— Aye.

The Clerk.— Senator Duhamel.

Senator Duhamel.— No.

The Clerk.— Senator Emerson.

Senator Emerson.— No.

The Clerk.— Senator Fitzgerald. (No response.)

The Clerk.— Senator Foley.

Senator Foley.— Aye.

The Clerk.— Senator Frawley.

Senator Frawley.— Aye.

The Clerk.— Senator Godfrey.

Senator Godfrey.— No.

The Clerk.— Judge Gray. (No response.)

The Clerk.— Senator Griffin.

Senator Griffin.— Mr. President, I feel about the same as Judge Bartlett on that question; I would like to give the respondent the benefit of the doubt, and I vote no.

The Clerk.— Senator Heacock.

Senator Heacock.— Aye.

The Clerk.— Senator Healy.

Senator Healy.— Aye.

The Clerk.— Senator Heffernan.

Senator Heffernan.— Aye.

The Clerk.— Senator Herrick.

Senator Herrick.— No.

The Clerk. — Senator Hewitt.

Senator Hewitt.— Aye.

The Clerk.— Judge Hiscock.

Judge Hiscock.— Aye.

The Clerk.— Judge Hogan.

Judge Hogan.— Aye.

The Clerk.— Senator McClelland.

Senator McClelland.— Aye.

The Clerk.— Senator McKnight.

Senator McKnight.— No.

The Clerk.— Senator Malone.

Senator Malone.— Aye.

The Clerk.— Judge Miller.

Judge Miller.— Nay.

The Clerk.— Senator Murtaugh.

Senator Murtaugh.— No.

The Clerk.— Senator O'Keefe.

Senator O'Keefe.— Nay.

The Clerk.— Senator Ormrod.

Senator Ormrod.—Aye.

The Clerk.— Senator Palmer.

Senator Palmer.— No.

The Clerk.— Senator Patten.

Senator Patten.— No.

The Clerk.— Senator Peckham.

Senator Peckham.— No.

The Clerk.— Senator Pollock.

Senator Pollock.— Aye.

The Clerk.— Senator Ramsperger. (No response.)

The Clerk.— Senator Sage. (No response.)

The Clerk.— Senator Sanner.

Senator Sanner.—Aye.

The Clerk.— Senator Seeley.

Senator Seeley.— Nay.

The Clerk.— Senator Simpson.

Senator Simpson.— Aye.

The Clerk.— Senator Stivers.

Senator Stivers.— No.

The Clerk.— Senator Sullivan.

Senator Sullivan.— Aye.

The Clerk.— Senator Thomas.

Senator Thomas.— No.

The Clerk.— Senator Thompson.

Senator Thompson.— No.

The Clerk.— Senator Torborg.

Senator Torborg.— Aye.

The Clerk.— Senator Velte.

Senator Velte.— Aye.

The Clerk.— Senator Wagner.

Senator Wagner.— Aye.

The Clerk.— Senator Walters.

Senator Walters.— No.

The Clerk.— Senator Wende.

Senator Wende.— No.

The Clerk.— Judge Werner.

Judge Werner.— No.

The Clerk.— Senator Wheeler.

Senator Wheeler.— No.

The Clerk.— Senator White.

Senator White.— No.

The Clerk.— Senator Whitney.

Senator Whitney.— Aye.

The Clerk.— Senator Wilson.

Senator Wilson.— No.

The Clerk.— How do you vote, Senator Frawley.

Senator Frawley.— Aye.

The Clerk.— Ayes, 28; noes, 25.

Mr. Herrick.— Of course, we have other evidence of the same kind, other witnesses, and, under this ruling, we cannot offer it.

That is all, Mr. Beardsley. We do not wish to be disrespectful to the Court; at the same time, unless the Court intimates to the contrary, we will offer other witnesses of this —

Senator Healy.— Mr. President.

The President.— Senator Healy.

Senator Healy.— I cannot hear a word of what counsel says.

Mr. Herrick.— I say we do not wish to be disrespectful to the Court, or be considered in contempt of its ruling, and unless there is a suggestion from the presiding judge to the contrary, we will put other witnesses upon the stand and proffer the same kind of proof. If you think it is useless, we submit.

The President.—If you wish to put them on, you can, and have a ruling on them. I don't see that it is of any practical benefit, under the ruling of the Court.

Mr. Herrick.—Very well.

The President.—Still, you may put your witnesses on the stand.

Mr. Herrick.—No. Under the suggestion that you make, there is no practical benefit; we do not want to appear to be disrespectful.

The President.—We do not want to consider it disrespectful at all.

Mr. Herrick.—We do not want to do anything the presiding justice considers impractical.

The President.—We do not consider anything disrespectful in the way of offering testimony.

Mr. Marshall.—Herbert H. Lehman.

The Clerk.—You do solemnly swear that the evidence which you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer, as Governor of this State, shall be the truth, the whole truth and nothing but the truth, so help you God?

The Witness.—I do.

The Clerk.—What is your full name?

The Witness.—Herbert H. Lehman.

HERBERT H. LEHMAN, a witness called on behalf of the respondent, having been first duly sworn in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Marshall:

Q. Mr. Lehman, where do you reside? A. 32 West 86th street in the City of New York.

Q. What is your business? A. I am a banker.

Q. What is the name of your firm? A. Lehman Brothers.

Q. Were you a member of that firm in 1912? A. I was.

Q. Were you acquainted with Governor Sulzer in 1912? A. I was.

Q. When did you first meet him personally? A. In July, 1912.

Q. Had you previous to that time had any correspondence with him, or any communication with him? A. Just previous to meeting him, yes.

Q. Will you state the circumstances under which you met him?

Mr. Stanchfield.—I object to that.

The President.—This is introductory. I think he may answer, but keep the witness to what is strictly introductory.

Mr. Marshall.—I will.

A. I wrote Governor Sulzer, Congressman Sulzer at that time, a letter.

Q. Have you that letter here? A. I have a copy of the letter.

Q. Will you produce that letter? A. (Witness produces letter-press copy book and shows copy of letter to Mr. Marshall.)

Mr. Marshall.—Do you want to look at it?

Mr. Stanchfield.—Where is the original; it was written to you?

Mr. Marshall.—We have not the original. This is the copy if you want to see it. Do you want us to explain the loss of it and all that sort of thing? We have heretofore told you we did not have the original.

Mr. Marshall.— I offer that letter in evidence.

Mr. Stanchfield.— That is objected to on the ground it is irrelevant and immaterial.

The President.— You will have to read it so the Court may pass upon it, so I don't see why you should not read it in the first instance.

Mr. Stanchfield.— May I ask counsel on the other side whether Governor Sulzer does not keep a file of the letters he receives.

Mr. Marshall.—We have not the original of this letter.

Mr. Stanchfield.— You have not answered my question.

Mr. Marshall.— I can only answer by saying we have not the original of this.

The President.— Do you raise the objection the loss of the original is not proved.

Mr. Stanchfield.— No, sir.

The President.— So it is relevant. Read it, because the Court may differ with me upon that.

Judge Bartlett.— What is the ruling, please? I did not understand.

The President.— It will have to be read in the first instance to you, as well as the Presiding Judge, as you are to rule on it as well as he.

I am frank to say I do not see any materiality.

Mr. Marshall.— It is for the purpose of indicating the way in which they came back and this letter was discussed in a subsequent interview.

The President.— I do not see that it does any particular harm anyway.

Mr. Marshall.— Shall I read it, your Honor?

The President.— Yes.

Mr. Brackett.— Read it for the benefit of the Court.

Mr. Marshall.— I will read it so they will hear every word I say.

"June 24th, 1912.

"Hon. William Sulzer, *No.* 115 *Broadway, City:*

"My dear Mr. Sulzer.— May I take the liberty of offering my aid in your possible effort to obtain the gubernatorial

nomination this autumn? It seems to me both by your record and your personality that you are the logical Democratic candidate, and it would give me great pleasure to do what little I can to help you in securing the nomination.

"It appears to me that while you, personally, are of course widely known throughout the State, the actual work which you have accomplished in Congress during the past many years is not as yet thoroughly appreciated. While I have followed your career closely, I frankly confess that I did not realize until very recently the large number of important movements with which you have been connected and which you have brought to successful issues. Would it not be possible and wise, before the next State convention, to bring before the voters your full record of accomplishments?

"I fear that I have neither the time nor the experience to do very much practical work, but I should be very glad, if you would permit it, to help defray the expenses of such a campaign of publicity.

"Very sincerely yours,

"HERBERT H. LEHMAN."

The President.— Irrelevant or not, now it cannot do any harm. It cannot affect any evidence.

Mr. Marshall.— This is introductory, your Honor.

Q. Did you after having written that letter have an interview with Congressman Sulzer? A. Shortly thereafter.

Q. Will you state the substance of that interview?

Mr. Stanchfield.— I object to that upon the ground that from no angle can it be material testimony, if the Presiding Judge please.

Mr. Marshall.— My contention is — I don't wish to waste any of the time of this Court, but we offer it as indicating the fact that we think it material that before Mr. Sulzer was nominated Mr. Lehman gave Mr. Sulzer a certain sum of money which Mr. Sulzer received and which went into his account and which will explain some of the matters as to which the Managers have gone into proof.

The President.— If you confine it to his declarations they are not competent but the fact you want to show he got it and put it in the account, just ask that fact, did he contribute it?

Mr. Marshall.— I will ask that fact.

Q. Did you prior —

Mr. Stanchfield.— Let me make an inquiry? You desire, if I understand you, to show that the witness gave to Mr. Sulzer before his nomination a contribution for campaign publicity?

Mr. Marshall.— Not for campaign publicity.

Mr. Stanchfield.— That is what he says in the letter.

Mr. Marshall.— You are objecting to —

The President.— One moment, gentlemen.

Mr. Marshall.— My answer to counsel's suggestion is I was going into the conversation which followed this letter. That has been objected to. It has been suggested we go right to the point when the money was paid. I wish now therefore to show just what took place at that time and what was said, that it had nothing to do with any campaign expenses because it was paid before even a nomination and before the Convention. But the money was received by Congressman Sulzer and went into his account, an account of $5,000, money which he had on hand in the fall of 1912, which has been the subject of discussion by your friends and the subject of proof by them heretofore, and animadversions, as it has been suggested.

The President.— I do not say it is competent. Now, nobody is better aware than you that a man's declarations are evidence against him, but not in his favor.

Mr. Marshall.— I am not trying to prove any declarations.

The President.— The Court will let you prove he contributed or gave him money and that he had it in his schedule.

Mr. Marshall.— I want to show what was said at the time, when it was and the amount that was given.

The President.— I think not, Mr. Marshall.

Mr. Stanchfield.— If the Presiding Judge will listen to me for a moment, this offer of evidence is to show a contribution by the witness to Governor Sulzer before he was ever nominated for Governor and the money he received from the witness he put in his private bank account. It is not in any statement at all.

The President.— I thought you said he did account for that.

Mr. Marshall.— No, your Honor, I haven't said so.

The President.— I misunderstood you then.

Mr. Marshall.— No, I haven't said anything about that, I say this.

The President.— It was my fault, not yours.

Mr. Marshall.— These Managers have shown a certain amount of money was received and was in the account of Congressman Sulzer in the fall of 1912; that he made certain payments for stock or that certain payments were made for stock which it is claimed were stocks which were required by him; that there were certain payments made to the firm of Harris & Fuller. They have shown certain amounts, traced certain amounts into the possession, as they claim, of the respondent. We wish to show what moneys he had, where they came from, so far as we may be permitted to do that, and among other things which we wish to show were received by him was this sum of $5,000, which was not a campaign contribution, but which went into his account, and which, therefore, bears legitimately upon the issue which the Managers have sought to inject into this case.

Mr. Stanchfield.— In answer to that, if the Presiding Judge please, every contribution that has been proven by the Managers in this case has been a contribution made to Governor Sulzer after his nomination, and while he was a candidate for Governor. We have proven both contributions which he reported and contributions which he did not report. Now, this testimony is in no way an answer to that. It is simply to show that before he was nominated the witness Lehman gave to him a contribution

for some purpose. Now, to cut this short, counsel may ask the witness how much money he gave Governor Sulzer, and it may go in the record if he wants it.

Mr. Marshall.— I do not permit you to rule on the propriety of my question. I ask the Court to rule.

The President.— Cease. I think this is competent; I did not understand it; for instance, you have shown for the prosecution that large sums of money were taken and given in these two or three stock accounts, I do not remember how many there were. I do not see why this is incompetent. It is the same as to show he got from his father who died $30,000, and was given to him in an estate; that is all. It tends to show that this money may have been his own, and not the result of his contribution. But now what the conversation is, or anything like that, you omit. You can show that he gave him money, or account for his possession of money.

Mr. Marshall.— I have got to show what was said at the time.

Mr. Parker.— Presiding Judge, just for a moment.

The President.— Yes.

Mr. Parker.— It seems to me the evidence which he offers cannot be of any assistance whatever to the Court, because it is of moneys given him two months at least before we offered any proof of deposits or payments by him for stock or otherwise with cash. There is a payment for instance, of one check of his for $900, when the shares of the value of $11,875 were taken over, one check; there were $7,724 of cash put into that account; there were eight checks of other people put in that account. Now, that is our proof on that particular account. How does it help? How does it clear to show that three months before that time $5,000 of cash was put in his pocket? It only tends to confuse, and does not clear up.

The President.— I think it does. You have proved here — I don't remember names always exactly, but I think you called it the Gray $500 account, if I am correct, that he was brought by the man Colwell, I think, that he brought thousands of dollars in cash —

Mr. Parker.— Yes, but your Honor, not only thousands, but every dollar was in cash of that account; but how does it help to show where that money came from, to show that three months before that he got from somebody $5,000 in cash, because it was cash, not checks, with which they paid for that.

The President.— I think it is competent. It will be for the court to say where this money came from. You may ask him. Omit the conversation, and get right to the point.

Mr. Marshall.— I have got to give the conversation to show what the relations were, and what the conditions were.

The President.— It does not make any difference what the relations were, if this man gave him the $5,000 in money, you have it.

By Mr. Marshall:

Q. Did you give any money to Congressman Sulzer in the fall of 1912, in the month of September? A. I gave him $5,000.

Q. When was it? A. On September 25th.

Q. Have you the voucher? A. I have not.

Q. What was said by you when you gave him that money? A. I gave it to him for his personal uses, without any conditions.

Cross-examination by Mr. Stanchfield:

Q. Now, Mr. Lehman, what do you say your occupation is? A. A banker.

Q. What is the name of your firm? A. Lehman Bros.

Q. When did you meet Governor Sulzer first? A. The early part of July, or the latter part of June, 1912.

Q. What was the date of the letter that you have introduced in evidence here that you wrote him? A. The book has been taken away. I think it was June 25th, if my recollection is correct.

Q. June 24th, wasn't it? A. I do not remember.

Q. At that time you had never met Governor Sulzer? A. No, I had never met him.

Q. How did you happen to address him as "Dear Mr. Sulzer?" A. I do not think that is a very unusual form.

Q. To a perfect stranger? A. No, he was not; I had known of him.

Q. Had you known him? A. I had never met him.

Q. And to address a communication to a perfect stranger as "Dear Mr. Sulzer"—

The President.— I think you have gone far enough.

Q. —you think is not out of the ordinary? A. I do not.

Q. When you first met him, did you have a talk with him on the subject of the letter you had written him? A. I did.

Q. Do you recollect the phraseology of the last sentence of that letter? A. I do.

Q. What did you say to him about this letter? A. I told him that I thought that a campaign of publicity would be of value to him; and that I would be glad to help defray some of the expenses of such a campaign.

Q. And isn't that what you gave him the $5,000 for? A. No.

Q. You say what? A. No.

Q. You say it is not? A. No.

Q. You gave him that money in September? A. Yes.

Q. On the 25th, you say? A. Yes.

Q. You knew he was then a candidate for Governor? A. The convention had not been held.

Q. You knew he was a candidate for the nomination? A. I knew he was a candidate for the nomination for Governor.

Q. That time when you gave him this $5,000 was within a week of the convening of the convention at Syracuse? A. Thereabouts.

Q. When you gave him this $5,000, what form was it in? A. In cash.

Q. And when you say in cash, do you mean in bills? A. Bills.

Q. Had you had any talk, other than the one that you have indicated, just after the sending of that letter, with Governor Sulzer? A. Several.

Q. In other words, before you gave him the $5,000, you had had several talks with him? A. Yes.

Q. Who suggested first that this $5,000 contribution of yours should be in currency or cash? A. I don't know that there was any suggestion made.

Q. That is a large amount of money, isn't it? A. Yes, sir.

Q. What was the denomination of the bills you gave him? A. I do not recollect; probably either $500 or $1,000 bills.

Q. Had you told him before you gave it to him, that you were going to make this contribution? A. I did.

Q. So that he was expecting it? A. Yes, sir.

Q. Hadn't anything been said between you as to the form that the money payments should be in, or that contribution? A. Not that I recollect.

Q. Are you prepared to say there was nothing said? A. I have no recollection of any conversation regarding it.

Q. That is not my question. Are you prepared to say that there was nothing said as to the form that the money that you were to give him should be in?

The President.— That calls for an answer, are you positive? A. I am not prepared to say.

Q. In other words, you are not positive? A. I am not positive.

The President.— Mr. Stanchfield, how long will this take, it is about the time of adjournment.

Mr. Stanchfield.— It will take me quite some few moments.

The President.— Then we will take a recess now, the time having come.

The Crier.— Hear ye, hear ye, this Court will now take a recess until 2 o'clock this afternoon.

Whereupon at 12:27 the Court adjourned until 2 o'clock P. M.

AFTERNOON SESSION.

The Crier.— Judges of the Court of Impeachment.

The President.— Call the roll.

The Clerk thereupon called the roll and found a quorum present with the following absentees:

Senator Fitzgerald.

Judge Gray.
Senator White.

The Crier.— Hear ye, hear ye, hear ye, this Court now resumes its session from recess.

The President.— Let the witness take the stand.

HERBERT H. LEHMAN, resumes the stand.

By Mr. Stanchfield:

Q. Mr. Lehman, I understood you to say this morning that you had had several conversations with Governor Sulzer between the date of the letter and the day of the payment of the $5,000? A. I did.

Q. Where did you have those conversations? A. Some at his office, some at my own.

Q. Have you seen him since election? A. Yes.

Q. Often? A. Several times.

Q. How many times have you been in Albany since his election as Governor? A. I should say four or five times.

Q. Did you come on those occasions to see him specially? A. No, sir.

Q. Did you see him on those occasions? A. Sometimes.

Q. How many times did you see him out of the four or five that you say you were here? A. I think I saw him on nearly every occasion; not on all.

Q. Have you seen his counsel? A. Yes.

Q. Talked with them? A. Not about the case.

Q. Talked with them? A. I don't know all his counsel, so I don't know them by name.

Q. Mr. Marshall, have you seen him? A. I have.

Q. You have known him for a good many years? A. I have.

Q. Now, in June, 1912, on the 24th, did you know anything about the letter in regard to the publicity of campaign contributions before a nomination? A. I did not.

Q. Do you know anything about it now? A. Nothing very definite.

Q. Well, you know more now than you did in June, 1912? A. Yes.

Q. Where did you get the information you now possess that you didn't have then? I looked up the law.

Q. For yourself? A. For myself.

Q. Did you read it? A. I did.

Q. Did you form an opinion about it? A. I did.

Q. Did you come to the conclusion that a contribution for campaign purposes before a nomination had to be a public record, as well as one after?

Mr. Marshall.— I object to that as improper and incompetent.

The President.— Objection sustained.

Mr. Stanchfield.— Well, will your Honor hear me upon that?

The President.— Yes.

Mr. Stanchfield.— The purpose is to show when this letter was written, in June, 1912, the letter upon its face conveys the offer of the witness to contribute for campaign purposes. Now he says that at the time when the money was paid over, on September 25, 1912, that there was a conversation which would tend to ignore the fact it was for that purpose?

The President.— My recollection was that on the respondent's examination the court excluded all the conversation. Whatever has come out has come out on your side.

Mr. Stanchfield.— That is my understanding of the situation. This evidence is to show that the witness informed himself at some period of time with reference to what the law was upon the subject of the publicity of those contributions.

The President.— I do not think it is material. He hasn't testified. The Court, on your objection, excluded carefully all conversations between the witness and respondent.

Mr. Stanchfield.— This is the record, if the Presiding Judge please, on our examination. (Reading.)

"Cross-examination. Q. What did you say to him about this letter."

This is the testimony which I had in mind, to which I invite your attention. It is found on page 1963, and at or near the close of direct examination by Mr. Marshall (reading):

"Q. Did you give any money to Congressman Sulzer in the fall of 1912 in the month of September? A. I gave him $5,000.

"Q. When was it? A. On September 25th.

"Q. Have you the voucher? A. I have not.

"Q. What was said by you when you gave him the money? A. I gave it to him for his personal uses without any conditions."

The President.— Is that in answer to your question?

Mr. Stanchfield.— Yes, sir. It was in answer to Mr. Marshall's inquiries.

The President.— I don't see why you should press your objection now.

Mr. Marshall.— That was the answer given to the question as to what took place in September, and on the objection of counsel I was prevented from going into any conversation which preceded September 25, 1912. I was not allowed to go into any conversation with regard to the transaction of September 25th, except to state what took place at the very time of the delivery of that money. Counsel is trying to go into the very things I was prevented and precluded from investigating.

Mr. Stanchfield.— Mr. Marshall asked the question, "What was said."

The President.— I was in error in my recollection. He said it was for his personal expenses?

Mr. Stanchfield.— Yes.

The President.— If that was brought out on the line of direct examination, they have a right to cross-examine. My recollection was at fault in that. You may ask the question.

Mr. Stanchfield.—Will you read the question, Mr. Stenographer?

(The stenographer thereupon repeated the question as follows):

"Q. Did you come to the conclusion that a contribution for campaign purposes before a nomination had to be a public record as well as when after?"

Mr. Marshall.— The question is what the conclusion of this witness is, and it is incompetent.

The President.— He can follow it by another question, which shows that has not affected his testimony.

Mr. Stanchfield.— Of course.

Mr. Marshall.— He is not a lawyer and cannot give an opinion as to the meaning of this law, which is puzzling to lawyers.

The President.— Only as it affects this witness' mind; that is competent.

By Mr. Stanchfield:

Q. Mr. Lehman, you told me you did read the law on the subject for yourself? A. Yes, sir.

Q. You read it, did you not, to arrive at a conclusion as to whether or no a campaign contribution before a nomination ought to be made a matter of public record? A. No, I did not.

Q. What did you read it for? A. Because I was treasurer of the Direct Primary Campaign Committee, and one of the counsel for the Managers implied that I should have filed a statement of the expenses and receipts of that committee, and on that account I read the law.

Q. That is what caused you to read it? A. Entirely.

Q. When you wrote that letter in June, you stated there in terms that you were willing to contribute for a publicity campaign, did you not? A. I think I said I was willing to help defray the expenses of a publicity campaign.

Q. I will take it that way. You meant what you said in the letter at that time? A. I did, sir.

Q. Did you change your mind as to what you wanted to contribute the money for between that and September 25th? A. No.

Q. So that on the 25th of September, when you handed over this $5,000 in currency, you had not changed your mind as to your willingness to contribute for a campaign of publicity? A. I had not changed my mind about helping to defray the expenses of publicity.

Q. Now, when you gave him then the $5,000 in bills, did you not mean by it to aid him in effecting a publicity of his campaign for Governor? A. Not by any means.

Q. What did you mean by it? A. I gave him $5,000 unconditionally. I knew that he was a man of straitened circumstances; I did not care what he did with his money, whether he paid his rent, or bought himself clothes, or paid for his office or any other expenses which he might incur.

The President.— That is far enough.

By Mr. Stanchfield:

Q. That is all argument. You did not tell him any one of those things? A. I told him nothing.

The President.— You have gone far enough with this examination.

Mr. Stanchfield.— I haven't any desire to trespass on your Honor's ruling. I don't know whether you mean by having gone far enough, that that is enough on cross-examination.

The President.— You have enough. You can present your arguments on both sides. It is a question of fact.

By Mr. Stanchfield:

Q. Did you contribute any moneys to pay for the postage and mailing of documents of Governor Sulzer? A. At what period?

Q. No matter what period. Any period. A. Governor Sulzer?

Q. Candidate Sulzer? A. I paid for — I bought and paid for the distribution of a number of copies of his speeches.

Q. That is, Sulzer's volume entitled "Short Speeches?" A. Yes, sir.

Q. Did you keep any memorandum of the amount you paid for the distribution of those? A. I have no definite memorandum.

Q. What? A. I can tell you what I paid for the books.

Q. I will get at that in a moment. I asked you if you kept any memorandum? A. No memorandum.

Q. You kept no books at all on the subject? A. I have no definite memoranda of it.

Q. You have told us about the postage. Did you pay for the books as well? A. I paid for the books as well.

Q. Do you recollect in amount what you paid, both for the books and for their distribution? A. I should think I paid about $6,000.

Q. $6,000. That was both for the books and for the distribution of the books? A. That is my recollection.

Q. Do you recollect, Mr. Lehman, whether that $6,000 you so paid was paid in one sum to one person? Or was it distributed among several persons? A. It was paid to two people, at various times.

Q. Do you recall whom? A. Yes. The Trow Directory people, to whom I paid for postage and distribution charges.

Q. How much? A. 5 cents a copy on about 50,000 copies.

By the President:

Q. That is approximately $2,500. A. Approximately $2,500.

By Mr. Stanchfield:

Q. You stated that you paid one amount to the — what was the name of the company? A. I think it is the Trow Directory Company, New York.

Q. How much did you pay that concern? A. Approximately $2,500.

The President.—Five cents each for 50,000.

Q. You paid that concern simply for distribution, didn't you? A. Distribution and postage.

Q. Distribution and postage? A. Yes, sir.

Q. You didn't pay them anything for the publication or printing of the book? A. No, sir.

Q. Isn't the correct name of that concern the Trow's Addressing Company? A. I couldn't answer on that point. I thought it was the Trow Directory Company.

Q. You don't recollect? A. I don't recollect exactly.

Q. (Continuing) Any accurate name? A. No.

Q. How much did you pay, and to whom, for the publication of those books? A. I paid 7½ cents a copy for, I believe, 50,000 copies, to the Ogilvie Publishing Company.

Q. The Ogilvie Publishing Company? A. The Ogilvie Publishing Company.

Q. Did you pay out any other amounts than those to which I have called your attention during the campaign of Governor Sulzer now for the election in 1912? A. No, sir.

Mr. Marshall.— What is the question?

The question was repeated by the stenographer.

Mr. Marshall.— I object to that as improper, as assuming that that was during the campaign of Governor Sulzer. The witness has not made any such statement.

The President.— No.

By the President:

Q. About what time of the year, if you can fix it by events? Was it after his nomination or before?

Mr. Stanchfield.— I will get at that.

The President.— Get at it as directly as possible. You may lead him, if you wish.

By Mr. Stanchfield:

Q. Did you not cause those volumes of short speeches to be distributed to the electorate of the State before the election of Mr. Sulzer as Governor? A. I did.

Q. And you incurred the expense to the Trow's Addressing Company, or whatever it was, before his election? A. I did.

Q. So that all these obligations with reference to which you have testified were contracted before his election? A. Yes, sir.

By the President:

Q. Now, was it after his nomination? A. These particular items which I have testified to were after his nomination.

Q. And before his election? A. And before his election.

The President.— Is that all?

Mr. Stanchfield.— Just a minute. That is all.

Redirect examination by Mr. Marshall:

Q. You paid for those books directly to the Ogilvie Publishing Company? A. Yes, sir.

Q. You paid for the distribution of those books directly to the Trow Addressing Company or whatever the name of the company may be? A. Yes, sir.

Q. Were those books sent out among the electorate of this State only or were they also distributed throughout the country? A. I cannot answer that question.

Q. Did I understand you to say that some of these books were distributed before nomination? A. Not of this 50,000.

Q. Not of those 50,000? A. No, sir.

Q. You say that you were here after Governor Sulzer became Governor of the State? A. Yes.

Q. What was the occasion of your coming to Albany on this occasion that you have referred to? A. I came I believe twice, to attend meetings of the State Reformatory for Misdemeanors, and I came either once or twice to attend a meeting of the Commission to revise the Banking Laws of the State of New York, and I came once on personal business.

Q. And you were interested in the campaign for direct primaries, were you not? A. I was very much interested.

Q. And was the treasurer of that campaign committee? A. Yes. I should have added that I came here at least once to attend a meeting of the Executive Committee of the direct primaries.

Q. And you were very much interested as a citizen in that movement for the direct primary? A. I was.

Mr. Marshall.— That is all.

By Mr. Stanchfield:

Q. To whom did you turn over the distribution of these books?

The President.— Is it worth while going into that?

Mr. Stanchfield.— I want to know to whom they were turned over.

The President.— I thought he said to the Trow —

Mr. Stanchfield.— No; before we get into the Trow Company.

The Witness.— No, I left the distribution itself to the Trow Directory Company.

Q. Did you have any conversation with Congressman Sulzer at that time on the subject? A. Simply to tell him that I was going to send these books out.

Q. Look at your letter book there; you also communicated with him on the subject of getting out these books for him, didn't you? A. Yes, sir.

Q. Under date of July 12th? A. July 10th.

Q. 1912? A. Yes, sir.

Q. And you called his attention there in a letter to the fact that you would start 5,000 of these books, did you not?

The President.— Fifty thousand.

Mr. Stanchfield.— No, not there; 5,000 as a starter.

By the President:

Q. This was before the nomination? A. Yes, sir.

By Mr. Stanchfield:

Q. That is, you would send out 5,000 of these books as a starter? A. Yes, sir.

Q. And from that time, July 10th, you kept sending out these books, as you testified, until the amount aggregated something like 50,000? A. No, from July 10th it aggregated some more than 50,000. I sent 50,000 personally after the nomination.

Q. How many did you send out before the nomination? A. Seven thousand five hundred.

Mr. Stanchfield.— That is all.

Senator Griffin.— I would like to ask the witness a question.

The President.— Yes.

By Senator Griffin:

Q. On June 24th, you wrote a letter to Governor Sulzer, then Congressman Sulzer, and that letter was read here this morning. Did you receive any reply from him to that letter? A. I did.

Q. In writing? A. Yes.

Q. Have you got it? A. I have not.

Q. Have you preserved it? A. I do not know whether I have or not.

Q. You keep a letter file, do you not? A. I do, yes, if a letter is of importance.

Q. Have you looked in your letter file to locate that letter? A. I have not, no.

Q. Will you do so? A. I will. I have not got the letter file here of course. My recollection is that it was a formal letter of acknowledgment.

Senator Griffin.— Mr. President, I think we ought to have that letter.

The President.— Will you send it up? Will you take it, gentlemen, if the witness sends it to the Clerk without compelling his attendance again?

Mr. Marshall.— We are perfectly satisfied.

Mr. Kresel.— Certainly.

The President.— Very good, witness, then send it up to the Clerk of the Court; he is also the Clerk of the Senate.

Senator Thompson.— I would like to ask the witness a question.

The President.— Senator Thompson.

By Senator Thompson:

Q. I understood you to say that you gave on the 25th of September, to William Sulzer, $5,000? A. Yes, sir.

Q. Do you mean that in addition to the $6,000 you spent for the publication of the Short Speeches? A. Yes, sir. I spent that $6,000 for the publication of the speeches myself; I paid all the bills, audited the bills and paid for them.

Q. But you gave up $11,000 in all? A. I gave $6,000 during the campaign. The $5,000 was before his nomination.

Q. What do you mean by during the campaign? A. After his nomination.

Q. You gave $5,000 before the nomination? A. I did, sir.

Q. You say you are the treasurer of the direct primary committee? A. Yes, sir.

Q. When was that organized? A. That was organized approximately May 15, 1913.

Q. It had not been heard of before that? A. Not this particular committee.

Q. How much did you receive as treasurer of that committee? A. I testified to that before the Frawley Committee. I don't recall without the records.

Q. I was not on the Frawley Committee? A. I beg pardon?

The President.— He states he does not recollect. If you saw the testimony, would you know?

The Witness.— Oh, yes. I think Mr. Richards had a resume of the receipts and expenditures.

The President.— Can't you agree on what it was?

The Witness.— I can give it approximately.

Mr. Kresel.— He can give it approximately, he says.

The President.— Just give it approximately.

Mr. Richards.—About $17,000.

The Witness.—About $17,000.

The President.—You have said in answer to Senator Thompson that you gave $6,000 besides during the campaign. Is that the $6,000 you spent to Trow and the Ogilvie Company, or in addition to that?

The Witness.— Oh, no, I gave nothing in addition to that.

The President.— That is the $6,000 all right. Very good. That is all.

Senator Foley.— Mr. President.

The President.— Senator Foley.

By Senator Foley:

Q. Did you pay the Trow Company by check or by cash? A. My recollection is that I paid in both ways. I am quite certain, however, that the larger portion of it was paid by check.

Q. Did you pay the Ogilvie Company by check or cash? A. I believe I paid them by check.

Q. How much did the 7,500 volumes which were distributed before nomination, cost you, including distribution and printing? A. I should say roughly $1,000 to $1,200.

Q. That is not included in the $5,000 contribution? A. It had nothing to do with the $5,000 contribution.

Q. So that you total your contributions up to election in excess of $12,000?

Mr. Marshall.— I don't desire to object to the question.

The President.— That is a mere matter of addition, isn't it?

Senator Foley.— I wanted to find out if that was included.

Mr. Marshall.— I object to the suggestion that it was a contribution. The witness explained how it was paid.

The President.— What you gave altogether during that campaign, call it what you may, was first $1,000 for distributing speeches before the nomination, $5,000 in cash, and after the nomination about $6,000 for printing of these speeches and their distribution?

The Witness.— Yes.

The President.— Does that include every sum you spent in aid of Governor Sulzer for every purpose?

The Witness.— Yes, sir.

The President.— Everything?

The Witness.— Yes, sir.

Senator Foley.— Mr. Lehman, was that all your money, or contributed from any other source? A. That was all my own money.

The President.— That is all.

(Witness excused).

Mr. Hinman.— I call Mr. Josephthal.

The Clerk.— You do solemnly swear that the evidence which you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer, as Governor of this State, shall be the truth, the whole truth and nothing but the truth, so help you God.

The Witness.— Yes, sir.

The Clerk.— What is your full name?

The Witness.— Louis M. Josephthal.

LOUIS M. JOSEPHTHAL, a witness called on behalf of the respondent, having been first duly sworn, in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Hinman:

Q. Mr. Josephthal, where do you reside? A. 26 East 73d street, New York City.

Q. How long have you lived there, that is, in the city of New York? A. Forty-five years.

Q. What is your occupation? A. Banker and broker.

Q. With what firm are you connected? A. I am the senior member of the firm of Josephthal, Lochheim & Company.

Q. What is the business of that firm?

The President.— He said that, didn't he, banker and broker?

Q. Do you know the respondent, William Sulzer? A. I do.

Q. How long have you known him? A. Four days after he was elected Governor of the State of New York.

Q. Have you had and do you have any official connection with his administration? A. Only in the capacity of naval aide on the military staff.

Q. When did you receive that appointment? A. Four days after he was elected Governor.

Q. Were you at Gettysburgh during the past year? A. Yes, sir.

Q. At what time? A. The entire period that the military staff were there.

Q. In what capacity were you there? A. As naval aide on the military staff.

Q. Did you see the respondent and his wife at that time? A. Yes.

Q. Did you have a talk with them, or either of them, at that time? A. Yes, sir.

Q. State with whom you had the talk and what it was?

Mr. Stanchfield.— I object to that as hearsay, incompetent and no foundation laid for its introduction.

The President.— I don't see —

Mr. Stanchfield.— The declarations of the respondent or his wife at that time are utterly incompetent in this proceeding.

The President.— You have two questions together. You had better divide them.

Mr. Hinman.— Yes.

Q. When was that talk, give the date of it? A. The second day they arrived in camp.

The President.— That was early in July, wasn't it?

The Witness.— The first week in July.

Q. Did you have any talk with the respondent's wife at that time? A. Yes, sir.

Q. State what that was?

Mr. Stanchfield.— I object to that on the ground —

The President.— How is it competent?

Mr. Hinman.— If your Honor please, I think it is competent to get at just what the situation was between this witness, whose name, you will observe, appears on the account of Harris & Fuller, with that transaction, that is where it begins, before Mrs. Sulzer and the relation that she bore to it, and that the respondent had with it.

The President.— I do not think it may come in at this stage. It may later, if you show what he did.

Mr. Hinman.— It is preliminary, leading up to what he did, and why he did it. You will remember the transaction as offered in evidence here, a communication from the respondent to the firm of Harris & Fuller, signed by the respondent for Mrs. Sulzer, and this is the witness who took up the stock from the firm of Harris & Fuller at the time when that letter was delivered to Harris & Fuller, and it is preliminary and leads up to that and shows what that transaction was.

Mr. Stanchfield.— I invoke, if the Presiding Judge please, any ordinary rules concerning the admission of evidence; and the sole answer to this argument of Mr. Hinman's is that the best testimony is the testimony of Mrs. Sulzer, and her declarations to Josephthal under no circumstances are competent.

The President.— Her declarations would be incompetent unless accompanied by an act.

Mr. Hinman.— Exactly.

The President.— What is beyond that? Is it followed by an act?

Mr. Hinman.— The action of this witness in connection with that entire transaction was based upon that.

The President.— No.

Mr. Stanchfield.— That we submit still is incompetent and hearsay.

The President.— I think he may ask — you had better ask him first whether he went to, what was the name of this firm?

Mr. Stanchfield.— Harris & Fuller.

By the President:

Q. Did you go to Harris & Fuller? A. Yes, sir.

Q. And did you take up the stocks there and give that money, what was it, $20,000——

Mr. Stanchfield.— $26,000.

A. Yes, sir.

The President.— There is no use, unless that is disputed, going over that. Now, you can ask him who told him to go there and how he came.

By Mr. Hinman:

Q. State, Mr. Josephthal, how you came to go to Harris & Fuller in this year and take up that stock? A. Mrs. Sulzer —

Mr. Stanchfield.— Pardon me, I do not understand that your Honor holds the conversation is admissible.

The President.— The conversation so far as he gave him instructions or asked him to do it.

Mr. Hinman.— That is all we propose to show, and just what we propose to show.

Mr. Herrick.— Go on, "Mrs. Sulzer"— A. Mrs. Sulzer informed me that she owned certain stocks on which her husband had borrowed money, and I interrupted her and stated that I would rather discuss this matter with her husband. Thereupon that same evening William Sulzer requested me to take up the account —

Mr. Stanchfield.—Wait a minute. I haven't asked you anything about him yet.

The Witness.— I am leading up to that, because I stated I did not care to discuss business with Mrs. Sulzer.

The President.— One moment. Ask your next question.

By Mr. Hinman:

Q. Did you thereupon or about that same day have a talk with the respondent with reference to the same matter, with William Sulzer? A. Shortly after that —

Mr. Stanchfield.— That calls for an answer, yes or no.

The Witness.—Yes, sir.

Q. State that conversation?

Mr. Stanchfield.— I object again to that testimony on the ground that the declarations of this respondent are hearsay, incompetent, improper and inadmissible in this proceeding.

The President.— Objection overruled so far as it relates to what instructions he gave him.

Senator Duhamel.—We have heard a great many charges from the prosecution here; there has been a great deal said about Mrs. Sulzer, and I am one who would like the facts in these cases, and would like to ask for a liberal ruling.

The President.— The Presiding Judge is trying to give a fairly liberal ruling of course to this respondent as to any other man charged with a serious offense, but he must adhere somewhat to what he believes to be the rules of law, you having adopted rules for your procedure, you having adopted the rules of evidence —

Senator Duhamel.— But, Mr. President, these charges have been made, testimony has been introduced; it seems only fair to have these charges heard —

Mr. Stanchfield.— My argument here addressed to the Court was that the best answer to the charges was by the testimony of Mrs. Sulzer and the Governor and not through the intermediary evidence of Commander Josephthal.

The President.—You may proceed.

By Mr. Hinman:

Q. State the conversation with Governor Sulzer? A. William Sulzer requested me to take up an account at Harris & Fuller. He said the stocks were owned by his wife and he had borrowed money on them. I then asked him the nature of the securities. He informed me there were 500 shares of Big Four common and 200 shares of Smelters common. I asked him how much he owed on

the account. He stated between $26,000 and $27,000. I figured out —

Mr. Stanchfield.— No. Just the talk, Colonel, he is asking for.

The Witness.—And I want to continue my talk. I figured an equity of $7,000 in the account; that was $10 a share on 700 shares of stock.

Mr. Stanchfield.—Are you relating conversation or what you figured out in your own mind?

The Witness.—And then I answered William Sulzer that I would take up the account.

By Mr. Hinman:

Q. What did you do thereafter in reference to taking up that account, if anything?

Mr. Stanchfield.— I object again to that, upon the same ground.

The President.— What was this?

Mr. Hinman.— I asked him what he did thereafter with reference to taking up the account?

The President.— Objection overruled. Answer it. A. William Sulzer informed me that he would telephone to Harris & Fuller Monday morning, and he gave me a card giving me power to take up the securities. When I arrived there Monday morning they refused to deliver the securities; they requested a letter from William Sulzer authorizing them to deliver the securities to me. Tuesday morning I received the letter; I ascertained the exact amount of the indebtedness; I sent a check to Harris & Fuller, and at noon, July 15th, I received the securities.

By Mr. Hinman:

Q. Did you deliver to Harris & Fuller this communication which you had received, on the Tuesday morning, directing them to turn the securities over to you? A. Yes, sir. I sent a certified check with that letter.

Q. Was that check a check of your firm? A. It was my check. It was the firm check signed by me, but my money.

Q. Have you from that time on retained and had possession of the shares of stock which you took up? A. Yes, sir.

Q. Was the money with which you took up that loan for the firm of Harris & Fuller the money of your firm?

The President.— How is that material? It came out of his bank. Unless somebody suggests to the contrary, we will suppose it was his.

By Mr. Stanchfield:

Q. Has any part of that money been repaid to you? A. Not one cent.

The President.— Is there any recross?

Senator Sage.— May I ask a question?

The President.— Senator Sage, yes.

Mr. Stanchfield.— Go ahead, Senator, ask your question.

Senator Sage.— I merely wish to ask whether when those certificates of stock were delivered to you they were transferred to your name? A. The 200 Smelters were, but the 500 Big Four were not.

Q. In whose name were they? A. The securities are in Albany, and I could answer that if it is very important.

By the President:

Q. What do you mean, that you cannot remember now? A. I cannot. No, sir, I do not remember.

Q. You know they were not in your name? A. They were not in my name; no, sir.

Q. Did they get the 200 Smelters transferred to you? A. I had the 200 Smelters transferred to me.

Q. That is what I imagined. When they were given to you he asked you when they were given to you.

By Senator Sage:

Q. When they were given to you? A. I believe they were in the name of Harris & Fuller. I cannot answer that.

The President.— Is there any cross?

Cross-examination by Mr. Stanchfield:

Q. Is your title colonel? A. Commander.

Q. Commander, are you a member of the Stock Exchange? A. Yes, sir.

Q. Do you recall during the winter of 1913, that various bills were introduced in the Legislature affecting, from the Exchange standpoint, injuriously the Stock Exchange? A. Yes, sir.

Q. There were bills of various kinds there; one to incorporate the Stock Exchange, another to double the taxation upon transfers of stock, and quite a number of bills affecting the Stock Exchange? A. Yes, sir.

Q. Did the Stock Exchange take any action with reference to the appointment of a committee to oppose the passage of the legislation embraced in those bills? A. Yes, sir.

Mr. Hinman.— That is objected to, upon the ground it is incompetent, improper and not a subject of cross-examination.

The President.— It is not a subject of his on direct. If you want to recall him — I think you may answer.

By Mr. Stanchfield:

Q. What was your answer? A. Yes, sir.

Q. Were you a member of that committee? A. I was not.

Q. Did that committee appear before the Governor with reference to those measures?

Mr. Hinman.— That is objected to.

By the President:

Q. Well, do you know? Were you part of it, or were you there? A. I was not a member of any of those committees.

Q. Were you with them when they met? A. I happened to be up here at one time on Naval Militia matters.

Q. Did you note or observe their appearance then? A. I couldn't help seeing the men, while I was lunching at the Ten Eyck Hotel.

Q. Before what, committee or Governor? A. I didn't see the committee or Governor because I only saw them at the Ten Eyck Hotel.

Mr. Stanchfield.— Shall I go on?

The President.— Yes.

By Mr. Stanchfield:

Q. Were you there upon any other occasion? A. I have been there on various occasions, attending to Naval Militia matters, and at one time I attended the first meeting, the Direct Primaries.

Q. Were you at any time before the Governor with reference to any of these Stock Exchange measures? A. No, sir.

Q. Either in a personal capacity or representing in any way the interests of the Stock Exchange? A. The Governor——

Q. No, no. Just answer my question, please. A. I am going to answer it in a fair way. At one time the Governor asked my opinion about the $4 tax, and I gave it to him.

Q. Was your opinion in favor of a tax or against it?

Mr. Hinman.— I object to it.

A. It was against the tax.

By Mr. Stanchfield:

Q. Are you in any way related to, or connected with, the Guggenheims? A. Yes, sir.

Q. What?

Mr. Hinman.— That is objected to on the ground it is immaterial and irrelevant.

The President.— How is it material? How are you going to connect it?

Mr. Stanchfield.— If the Presiding Judge expects me in advance to outline, of course, the course of a cross-examination, you might as well declare the cross-examination off.

The President.— No; I don't think so, Mr. Stanchfield.

Mr. Stanchfield.— Do you sustain the objection? I asked the question whether he is related to the Guggenheims.

The President.— The objection will be sustained at the present time.

By Mr. Stanchfield:

Q. Are the Guggenheims largely interested in the control of the Smelters stock that you took up?

Mr. Hinman.— Objected to on the ground it is incompetent, irrelevant and immaterial.

The President.— Now, you are getting at it. He may answer.

By Mr. Stanchfield:

Q. Those 200 Smelters that you had, those 200 shares of the ordinary or common stock of the American Smelting and Refining Company, was it not? A. Yes, sir.

Q. And that concern is a so-called Guggenheim concern, is it not? A. Yes, sir.

Q. They exploited it —

The President.— Well, you have enough. Do you want the details of it, Mr. Stanchfield?

Mr. Stanchfield.— I haven't any idea, if your Honor please, to trespass on the rules of cross-examination.

The President.— Very good. That is all, witness. Call your next.

Senator Walters.— Mr. President —

The President.— Senator Walters.

Senator Walters.— May we have produced in court the certificates of Big Four stock?

The President.— Yes.

By the President:

Q. Did you get it transferred to yourself after you got it?

Senator Walters.— No, if the Court please, the witness says they are in Albany.

The President.— What is that?

Senator Walters.— The witness says the certificates are in Albany.

The President.— Yes.

Senator Walters.— I would like to have the certificates produced in Court, both of the Big Four and the Smelters.

By the President:

Q. Can you do that? A. Yes, sir.

Q. Have you them with you? A. I have them with me.

(Whereupon the witness produced some papers.)

The President.— Senator, what do you want to know? The name?

Senator Walters.— I desire to know in whose name the stock is issued, and the date of the issue.

The President.— The Senator wishes to know the name and date of the certificates.

The Witness.— They are in the name of Louis R. Schenck.

By Senator Walters:

Q. Which ones? A. 500 shares are in the name of Louis R. Schenck.

Q. And indorsed in blank? A. And indorsed by Harris & Fuller, the 500 shares.

By the President:

Q. Aren't they indorsed "Louis R. Schenck" too? A. They are indorsed "Louis A. Schenck" and the signature guaranteed by Harris & Fuller.

Q. You mean the transfer power of attorney, the transfer on the back? A. Yes, sir.

By Senator Walters:

Q. What is the date of the power? A. April 1, 1913.

By the President:

Q. What is the date of the face of the certificates? A. Well, I will read the dates; March 1, 1913, 100 shares; another 100 shares March 1st; another 100, March 1st; all March, 1913.

By Mr. Brackett:

Q. All March 1, 1913? A. Yes, sir.

By Senator Walters:

Q. Is the Big Four a dividend paying company? A. It is not.

Q. May I ask the witness whether the Smelters was in the name of Schenck? A. As I stated before, the Smelters is in the name of my firm; I had them transferred.

Q. The original certificates? A. That I cannot answer at the present time, but I could give the Court the information from my office.

Q. Wasn't there a certificate of 100 shares of Southern Pacific? A. No, sir.

Q. You did not take that up? A. No, sir.

Senator Thompson.— Mr. President, may I ask a question?

The President.—Yes.

By Senator Thompson:

Q. Mr. Witness, would you remember if any of this stock was in the name of Mrs. Sulzer when you went to get it? A. Yes, sir.

Q. Was any of it in her name? A. No.

Senator Emerson.— May I ask one question?

The President.— Senator Emerson.

By Senator Emerson:

Q. I would like to know if this witness contributed anything to Mr. Sulzer's campaign? A. Not one cent.

Mr. Hinman.— May it not be conceded that the record shows that Mr. Schenck was a member of the firm of Harris & Fuller?

Mr. Kresel.— It does not.

Mr. Hinman.— He was connected with that concern, I think the evidence is; isn't that a fact?

Mr. Kresel.— I do not recall that.

By Mr. Stanchfield:

Q. Who is the regular counsel for your firm? A. We have no regular counsel.

Q. Do you know Mr. Frankenstein? A. Yes, sir.

Q. Is he your counsel now? A. He has done work for us at various times.

Q. When did he begin? A. I believe he began in December.

Q. This last December? A. Yes, sir.

Q. December, 1912? A. Yes, sir.

Q. Did he become counsel under a written contract or retainer? A. I believe that he gets a certain retainer; I am not absolutely certain.

Q. Was the arrangement between your firm and Frankenstein in writing? A. That I cannot answer.

Q. Now, with reference to your appointment on the staff, when was that appointment made? A. That originally was made many months —

Mr. Hinman.— If the Court please, I object to the form of the question.

Q. When, in December, 1912, did you employ Frankenstein? A. I believe it was the latter part of the month.

Q. The latter part of December, 1912? A. Yes, sir.

Q. When were you appointed on the staff of Governor Sulzer? A. I was appointed four days after the Governor was elected.

Senator Griffin.— Mr. President, may I ask the witness whether he means four days after Governor Sulzer was elected in November, 1912, or after Governor Sulzer was inducted into office on January 1, 1913?

By the President:

Q. You mean to refer to his election, or to the time he commenced or took office on January 1st? A. The Governor informed me four days after the election that I was to be appointed on his military staff as his naval aide.

Q. Four days after; that was before he became Governor? A. That was the first time I met the Governor.

Senator Griffin.— But that was to take effect after the Governor-elect became the Governor of the State? A. Naturally.

Q. And what was the date of your commission? A. You do not receive a commission as aide to the Governor.

Q. Did you receive any official notice? A. Yes, sir.

Q. Of your appointment as aide? A. Yes, sir.

By the President:

Q. Were you holding a commission in the National Guard already? A. Yes, I was aide to Governor Dix, and I received a notification through the Adjutant-General's Department that I was to be naval aide of Governor Sulzer.

The President.— I think we have got it now. That is all, witness.

Mr. Hinman.— Louis A. Sarecky.

The Clerk.— You do solemnly swear that the evidence which you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer, as Governor of this State, shall be the truth, the whole truth and nothing but the truth, so help you God.

The Witness.— I do.

The Clerk.— What is your full name?

The Witness.— Louis A. Sarecky.

Louis A. Sarecky, a witness called on behalf of the respondent, having been first duly sworn, in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Hinman:

Q. Mr. Sarecky, where do you live? A. 316 Monroe street, Brooklyn.

Q. How long have you lived there? A. I think about three months, maybe a little longer; I don't know just when we moved there.

Q. Are you married? A. Yes, sir.

Q. When were you married? A. December —

The President.— How is that material?

Mr. Hinman.— Not very.

Q. What is your age? A. I am going to be 28 this coming January.

Q. Were you subpoenaed here in the trial of this case before this court as a witness on behalf of the prosecution? A. Yes, sir.

Q. When were you so subpoenaed? A. I think about ten days ago, may be a little less, I don't know the exact date.

Q. Did you attend the sessions of this Court in response to and in accordance with that subpoena? A. I did.

Q. What is your occupation? A. At the present time I am lay member of the Board of Deportation for the State Hospital Commission.

Q. Who did you succeed on that board? A. Dr. George B. Campbell.

Q. What salary was Mr. Campbell getting? A. I think $5,000 a year.

By Mr. Stanchfield:

Q. Do you know anything about it? A. Yes, I do.

Q. Is it of your knowledge that you say $5,000? A. Of my knowledge.

By Mr. Hinman:

Q. During 1912, what was your occupation? A. Well, I acted as secretary to then Congressman Sulzer.

Q. William Sulzer? A. William Sulzer.

Q. How long had you acted in that capacity for William Sulzer? A. I have been connected with Mr. Sulzer for a period

of ten and a half or eleven years, and some time during that period I became his secretary.

Q. Where was the place of your employment during that period? A. In New York City.

Q. What was the nature of your duties as secretary to William Sulzer, and where did you perform such duties? A. They were the duties of an ordinary secretary: I looked after the mail, attended to his personal affairs, interviewed visitors.

The President.— A little louder. What were the ordinary duties of a secretary?

The Witness.— I am going to tell you. I opened all his correspondence when he was not at the office, and even when he was at the office. I interviewed various people. Attended to what business interests he had, such as I could attend to and all this work was done at 115 Broadway, in New York city; that is the office of Mr. Sulzer.

Q. Has William Sulzer's office been at 115 Broadway during this entire period of ten and one-half or eleven years? A. No, sir.

Q. What you mean then, I take it, is that since his office was at 115 Broadway your duties have been performed at that office? A. Yes, sir, at that office.

Q. And prior to that were performed at the office formerly occupied by him? A. Yes, sir.

Q. Did you perform any of your duties at Washington or were they confined to the city of New York, his office there? A. My duties were confined to the city of New York.

Q. Where did William Sulzer live in 1912? A. 175 Second avenue.

Q. Describe the suite of offices that were occupied by William Sulzer during the months of October and November, 1912? A. They were on the ninth floor of 115 Broadway, on the north side of the building. The suite constituted rooms 911, 12 and 14. Nine hundred and thirteen was omitted in numbering the offices. As soon as one entered the office of Mr. Sulzer he came into an ante room. To the left was Mr. Sulzer's private office, and to the right was what he called the company room and directly in front of the ante room was Mr. Frankenstein's office.

Q. By the front you mean between the ante room and the street side? A. Between the ante room and the street side.

Q. So that in passing from the hall to that room which you say was Mr. Frankenstein's room you would pass directly through the ante room? A. Yes, sir.

Q. Who occupied this room at the right which you say was called the company room? A. That room was occupied by Governor Spriggs.

Q. And called the company room? A. Called the company room.

Q. This room which you say was the private room of William Sulzer, out of what room or through what room was that private room entered? A. Through the ante room; through the entrance room, so to speak.

Q. In which way did the door swing that opened between the ante room and William Sulzer's private room? A. It swung into the ante room.

Q. As you entered William Sulzer's private office from the ante room on which hand was his desk located? A. On the right-hand side.

Q. Was that the situation during all the time that he has occupied that suite of rooms? A. Yes, sir.

Q. What kind of a desk did William Sulzer have in that room, if any? A. He had a mahogany roller top desk.

Q. Where was that located in that room? A. It was located to the right of the door as you enter.

Q. And in what condition with reference to the end or the back being against the wall? A. There was one end of it to the wall and the back faces the door.

Q. So that a man sitting at that desk would be with his back in what direction? A. With his back toward the window and his face toward the door.

Q. With the body of the desk between him and the door? A. Yes, sir.

Q. And you say the end of the desk was against the right hand wall as you entered his private room? A. The right hand wall as one entered his private room.

Q. Do you remember when William Sulzer was nominated for Governor at Syracuse? A. On the morning of October 3d, I think.

Q. Nineteen hundred and twelve? A. Nineteen hundred and twelve.

Q. Were you at Syracuse? A. No, sir.

Q. Where were you? A. I was at 115 Broadway. Not the morning he was nominated.

Q. Were you the day after that there? A. Yes; I was that morning too, because he was nominated at two or three o'clock in the morning, but I was in New York.

The President.— He means were you down there. You didn't go to Syracuse?

The Witness.— No, sir.

Q. During the campaign where were you and what were you engaged in? A. I was at the office continuously. I was at the office every day and was engaged in looking after what correspondence came into the office; interviewed visitors; receiving money; paying bills; answering telephone calls and doing whatever work there was to be done.

Q. What other people were employed there in that office during the campaign? A. We had Mr. R. K. Weller, Mr. Frank S. Cisner and Charles Horowitz.

Mr. Stanchfield.— Charles who? What was the name?

The Witness.— Horowitz.

Mr. Hinman.— H-o-r-o-w-i-t-z.

The Witness.— Then I hired two assistants later on. I do not remember their names.

Q. Was there any other persons there assisting in the work during the campaign? A. Yes, sir. There was Tom Leary, a brother-in-law of Mr. Delany and Matt Horgan helped out extensively.

Q. Who was Matt Horgan? A. At present First Deputy Commissioner of Efficiency and Economy.

Q. Is he the same one who later became Secretary to the so-called Frawley Investigating Committee? A. Yes, sir.

Q. When you say you were at work at the office during the campaign, do you mean William Sulzer's office at 115 Broadway? A. Yes, sir.

Q. During what hours did you work there on the average through the campaign? A. Between 9 in the morning and 2 in the morning.

Q. During the campaign you say you were engaged in opening and answering letters and looking after the mail. What do you say as to the quantity of mail received there at that office during the period between the time when William Sulzer was nominated for Governor and the date of his election? A. I think it averaged about 250 or 300 communications a day.

Q. Were those in the form of letters and telegrams? A. Yes, sir.

Q. During that campaign was William Sulzer there at his office continuously? A. No, sir.

Q. Where do you know of his being during that period besides at his office? A. He was away on two or three campaign trips.

Q. What campaign trips was he away on during that period? A. He was away on a short trip of I think two days about the middle of October.

Q. Where did he go? A. He went up one side of the Hudson as far as Albany or Troy and came down on the other side.

Q. What other trip or trips did he make during the campaign? A. He took what we call the long trip. I think it was a ten day trip and in that trip he went through the State as far up as Ogdensburg and I think Malone, I am not sure, and came down by way of Buffalo along the central part and then came down the Hudson.

Q. Where were you during those two trips? A. At the office.

Q. Did he make any other campaign trip? A. He made one campaign trip through Long Island.

Q. In addition to these three trips you have mentioned do you know whether or not he was during that campaign delivering speeches in different parts of New York city? A. Yes, sir.

Q. During this campaign what would you call as to the number

of callers or visitors there at his office, 115 Broadway? A. The office was crowded all day with visitors. There were not chairs enough for them to sit down. I think we had on an average not less than 100 or 200 callers a day.

Q. While William Sulzer was at his office during the campaign, what was he engaged in doing? A. He was in his private office interviewing and seeing people; some would call to see him and sometimes he would talk over the telephone; look at some correspondence and prepare speeches, I think.

Q. Who looked after the mail during that period? A. I looked after it most of the time, in fact, all the time I looked at it.

Q. Who opened the mail? A. I, with the assistance of the three gentlemen I named before.

Q. Name them now, the three who helped you open the mail? A. There was Mr. Weller, Mr. Cisner and Mr. Horowitz, and when Mr. Horgan was at the office, he, too, helped.

Q. Who dictated most of the replies to communications received during the campaign? A. There was very little dictating. I got up a form which would answer the purpose and I sorted out the letters, gave each one a batch of them and he knew the form to use.

Q. There was evidence introduced in evidence here, some letters that went out from that office during the campaign which in effect read as follows: "I thank you very much for all that you have done and all you say and you can help me very much," or words to that effect. Who got up that form of letter? A. I got the letter up, but that was not the form though.

Q. Well, was it something to that effect? A. Something to that effect.

Q. Did you during that period or was there received during that period some letters and communications enclosing checks and money. A. Yes, sir.

Q. The letters which have been introduced in evidence show that none of them mentioned any amount and did not speak of campaign contributions. Was any direction of any kind given to you by anyone with reference to leaving such a statement out in the letter?

Mr. Stanchfield.— I object to that as not predicated upon the testimony and because it calls for a conclusion and is incompetent.

The President.— Read the question.

The stenographer read the question as follows:

> "The letters which have been introduced in evidence show that none of them mentioned any amount and did not speak of campaign contributions. Was any direction of any kind given to you by anyone with reference to leaving such a statement out in the letter."

The President.— Objection overruled. You may answer.

Mr. Hinman.— I can state it in better form. It is a little involved.

Q. Did anyone say anything to you at any time during the campaign with reference to making any statement in any letter with reference to donations or moneys received? A. No, sir.

Q. Why was this general form of letter which you say you sent out gotten up in the shape in which it was? A. In using that form I tried to concoct it so that it would cover almost everything that might come up during the course of our business. We would send the same letter to people who were doing things and people who were sending money and that form covered everything. We would send the same letter to a person who was attending meetings or getting up meetings.

Q. These moneys and checks as they were received, what was done with them? A. I deposited them to my account.

Q. Where was your account? A. In the Mutual Alliance Trust Company.

Q. Was that an account which you had opened in that bank before William Sulzer was nominated for Governor? A. Oh, yes.

Q. Where had you had your account during the years before? A. The Carnegie Trust Company.

Q. What had happened to the Carnegie Trust Company in the meantime? A. Went through bankruptcy, I think. It closed.

Q. In any event it closed? A. It closed.

Q. After the nomination was made at Syracuse did the question come up there in the office of the formation of a campaign committee on behalf of William Sulzer? A. It did.

Q. Who was selected as Chairman of that Committee?

Mr. Stanchfield.— I object to that unless the respondent was present.

The President.— I think I will let it in. Do you know of your own knowledge? You may answer.

The Witness.— What is the question?

Q. Who was selected as chairman of that committee? A. Colonel Bacon was first nominated but he declined on the ground that he would be pretty busy in the National campaign and finally Governor Spriggs was chosen as chairman.

Q. Who was Governor Spriggs?

The President.—Ask him where was this Committee meeting?

Q. Where was the committee held? A. The meeting was held at the office of Governor Sulzer, 115 Broadway, consisting of a number of the Governor's friends.

The President.— Were you a witness of this proceeding?

The Witness.— Yes, I was a member of that committee.

Q. Was William Sulzer at any time present? A. I don't know whether he was present during the business of the meeting. He may have come in but I don't remember.

Q. Who was ex-Governor Spriggs? A. He is Mr. Sulzer's business associate.

Q. Where was his office? A. In the same suite of offices.

Q. Which room did he occupy?

The President.— He has already said that he has said that it was in front of the ante room, which was Mr. Frankenstein's office. Is that what you said?

The Witness.— Yes, sir.

By Mr. Hinman:

Q. Who was elected as secretary and treasurer of that committee? A. I was.

Q. As these moneys were received through the mail — I withdraw that. Were there also, in addition to the moneys and checks which were received during the campaign in the mail, other moneys and checks delivered there to you and at the office? A. Yes, sir.

Q. Do you know a man by the name of Pinckney? A. I do.

Q. The one who was sworn here as a witness? A. Yes, sir.

Q. Were you present on an occasion in October of 1912 when he was there at the office and wrote his check? A. I was.

Mr. Hinman.— Change that question. My associate says it was on or about November 1st.

Q. Were you present when he wrote the check? A. I was.

Q. And when he delivered it? A. Yes, sir.

Q. Did you hear the conversation which occurred then between him and William Sulzer? A. Yes, sir.

Q. All of it? A. Every word of it.

Q. There at that time did William Sulzer say to Mr. Pinckney, in words or in substance, that Mr. William Sulzer did not propose to account for that money? A. No, sir; he didn't say anything of the kind.

Q. To whose order was the check made? A. It was made out to my order.

Q. When was it delivered to you, if at all? A. In the presence of Mr. Pinckney. He gave it to the Governor, to Mr. Sulzer, and Mr. Sulzer handed it to me.

Q. What did you do with it? A. I deposited it to my bank account.

Q. In this Mutual Alliance Bank? A. In the Mutual Alliance Bank.

Q. In making your deposits in that bank during this campaign, were deposit slips made which accompanied the deposits made? A. What was your question?

Q. Were deposit slips made out to accompany the deposits? A. Oh, surely.

Q. Who made out those deposit slips? A. I made out some of them, and some of them were made out by the people who were assisting me in my work.

Q. Name them, as far as you can? A. Mr. Weller, Mr. Cisner and Mr. Horowitz.

Q. Did Mr. Horgan have anything to do with the making out of any of those deposit slips? A. Yes, sir. He assisted me in that work, but I don't know whether he personally wrote out any of the deposit slips.

Q. On the deposit slips, do you recall whether or not the names of the donators, that is of the persons who had given checks appeared on the deposit slips? A. We never put them on, not on the deposit slips.

Q. Do you know whether they were put on at the bank or not? A. I have seen photographs of those deposit slips, and have since learned that they were put on.

Q. After the election was over, what, if anything, came up in relation to the making and filing of a campaign statement, or statement of campaign moneys used and expended?

Mr. Stanchfield.— Once more I object, unless that is confined to periods when the respondent was present.

The President.— Yes; it must be.

Mr. Hinman.— If your Honor please, we propose to show, that is, we want to show, if we may be permitted, that then, for the first time, this witness discovered or learned that a committee, a campaign committee, was required by law to make and file with the Secretary of State, a certificate showing, within I think three days or five days, after, the officers of a committee were elected, a certificate showing the names of the committee, and that he then learned that this — well, that that had not been done, and he then was in a quandary as to how the statement should be made out, and what they should do.

The President.— Well, you may show it.

Mr. Stanchfield.— Show it in the absence of the defendant or respondent?

The President.— Yes.

Mr. Hinman.— What came up, Mr. Sarecky —

The President.— If it turns out differently, I will strike it out.

By Mr. Hinman:

Q. What came out in connection with the making of a statement of campaign expenses? A. We received, I think from Tammany Hall —

The President.— Louder.

A. We received, either from Tammany Hall, or from the Secretary of State, a blank form on which a statement was to be made out, to be filed with the Secretary of State, of receipts and expenditures of campaign funds.

By Mr. Hinman:

Q. When you say we received it, what do you mean by "we." A. I mean it was received at the office.

Q. Who opened it? A. I don't know. I may have opened the envelope, or one of my assistants. And then at that time the question came up as to whether the committee had the right to file a statement, inasmuch as it had neglected, or someone had neglected on behalf of the committee, to file with the Secretary of State a notice to the effect that such a commitee had been formed, and that I had been selected as treasurer. So some one suggested that I take the matter up with Mr. Sulzer. I went into his room, and told him of the quandary we were in, and he said, "Well, make up the statement anyway; it does not matter very much who signs it, as long as we comply with the spirit of the law." So I went outside and then worked on the statement for about a day and a half, brought it in to Mr. Sulzer, and he signed it. I took it in to a notary, and he said —

Mr. Stanchfield.— Never mind what the notary said.

The Witness.— The notary acknowledged it, and I mailed it to Mr. Lazansky, the Secretary of State.

Q. I show you Managers' Exhibit No. 3, and ask you if that is the statement which you prepared? A. Yes, sir.

Q. Who did the typewriting on the sheet that is attached to this blank form? A. I did.

Q. And is that the blank form that you had received there through the mail? A. I think it is, yes, sir.

Q. In what room were you when you prepared that? A. In the anteroom.

Q. Who, if anyone, assisted you while you were preparing it, or in the preparation of it? A. I think Mr. Horgan was the one who helped me get it up. He brought an adding machine and came from his office, 285 Broadway, and he and I worked on it, and finally got it up.

Q. Did William Sulzer have anything whatever to do in the work of preparing that statement? A. No, sir.

Q. You say that after it was prepared you took it to William Sulzer? A. Yes, sir.

Q. Where was he when you took it to him? A. In his private office.

Q. In what way was the blank or this statement when you took it in to him at his office? A. It was in its completed form.

Q. In what way was it folded, when you took it in to him A. I took it in this way (indicating), and showed him where he was to sign.

Q. You mean by that that the first sheet had been thrown over back? A. Yes, sir.

Q. So it exposed the last page where the places had been printed for signature? A. Yes, sir.

Q. Where was he when you took it into his office? A. He was at his desk.

Q. What doing? A. I think he was going through some correspondence.

Q. What did you do with it when you went in his room that day? A. I said, "Here, Congressman, here is the statement which I got up; here is the statement, Congressman." I think those were the exact words I used, "This is the statement," and I had the first page folded over this way — I had the first page folded over back, and showed him where he was to sign, and he turned it back and said, "Is this all right?" I said, "This is as accurate as I could get it," and he signed it.

Q. Where did he sign it? A. In those two places where you see his signature.

Q. As it lay on the desk? A. As it lay on the desk.

Q. Did he read any part of this statement, or examine it? A. He could not have read it very carefully, because he did not hold it over a minute or two at the most, just long enough for him to sign his name.

Q. So far as you saw, he did not examine or read any part of the printed or typewritten matter on it? A. No, sir.

Q. After he signed his name, what did you do with the blank? A. I took it into the office of House, Grossman & Vorhause, and there asked for Mr. Stupell, who was a notary, and generally does our work; Mr. Stupell was out, and someone asked me whether a commissioner of deeds would do, and I said I thought he would, so I went into the office of Mr. House, and in his office was Mr. Wolff. I told him this was the Governor's signature, he knew it, but he said he was going back with me to shake hands with the Governor, to congratulate him and ask him whether he signed it, and he and I went back into the Governor's private room, and I opened the door, and said, "Here is the Notary," and Mr. Wolff said, "I want to congratulate you, Governor," and shook hands, and he said, "You signed that, didn't you," and the Congressman said, "Yes." Then Mr. Wolff came out with me into my room, the anteroom, and wrote his name at my desk. He did not write his name at the Governor's desk. It was all covered up and littered up with papers, letters and books.

Q. Now, when you went from the Governor's private office, after he had signed this Exhibit 3, Managers' Exhibit 3, did you take the statement with you into the office where you obtained the services of this commissioner of deeds? A. I did.

Q. And had it with you when you went in there? A. I had it with me, when I went in there.

Q. While Mr. Wolff was there with William Sulzer, with this statement, Managers' Exhibit 3, did he, Mr. Wolff, read any part of that affidavit or statement to Mr. Sulzer? A. No, sir.

Q. Did anyone read any part of that to William Sulzer? A. No, sir.

Q. Was this statement at that time handed to William Sulzer,

or did he have it in his hand or on his desk? A. What time are you referring to?

Q. When Wolff was in there with it? A. No, Wolff held it in his hand.

Q. Did you at any time, or so far as you know, did anyone at any time have any talk with William Sulzer regarding what was in the statement, or what was not in it? A. Not to my knowledge.

Q. Or as to what should be put in it, or what should be left out of it? A. No, sir.

Q. After William Sulzer had signed his name to that Exhibit 3 that day, as you have described, did he have it in his hands again? A. No, sir.

Q. How soon after it was signed by Mr. Wolff there in the anteroom and at your desk, was it that it was mailed by you? A. It was mailed that afternoon.

Q. The same afternoon that it was signed? A. Or the same morning, I do not remember whether it was the morning or the afternoon; it was mailed that same day.

Q. In this statement that is filed here, this Exhibit 3, I find the name of Mr. Elias; do you know who this Mr. Elias was and is? A. I think he is a brewer.

Q. Connected with what brewery? A. I don't know; Elias Brewing Company, I think.

Q. Was anything said to you by William Sulzer, or intimated by him at any time that donations or gifts received by brewers should not appear in connection with this campaign, or that their names should be kept secret? A. I never discussed with Mr. Sulzer the making up of this statement at all, that is as to what should go in or what should not go in.

I show you Managers' Exhibit 29, which is a letter dated October 22nd, 1912, and which the court will remember as the letter that has the words "en route" on it, the letter of October 22nd, "en route," a letter addressel to the Mutual Alliance Bank.

The President.—The letter on which they are to take his endorsement on checks?

Mr. Hinman.—Yes.

Q. Who wrote that letter? A. I did.

Q. Where? A. At the office.

Q. Where was William Sulzer on October 22nd, when you wrote the letter? A. He was on his long campaign trip then.

Q. Who signed the letter? A. I did.

Q. What was done with it after you signed it? A. I took it down to the Mutual Alliance Trust Company.

Q. Had you been endorsing William Sulzer's name on checks prior to that time? A. Oh, yes.

Q. And did you continue to endorse William Sulzer's name on checks thereafter? A. I did.

Q. In endorsing William Sulzer's name, did you sometimes write it, and did you sometimes affix it with a rubber stamp? A. I did.

Q. Was there a rubber stamp kept there at the office having a facsimile of William Sulzer's signature thereon? A. We had half a dozen stamps of his facsimile signature.

Senator Griffin.— Can we look at that letter, Mr. President?

The President.— Yes. Will you gentlemen give Senator Griffin that letter. Is that the letter that purported to be signed William Sulzer, and authorizing the bank to take the witness's endorsement of his name?

Mr. Hinman.—Yes, sir.

(The letter was thereupon handed to the members of the court for personal inspection.)

Senator Emerson.— Mr. President.

The President.— Senator Emerson.

Senator Emerson.— Did the witness swear that he signed that letter?

The President.— He did say so, as I understood it. But before you repeat your question, wait until the other members look at the letter, so that their attention may not be distracted.

Now, Senator Emerson, if you will put the question.

Senator Emerson.— I would like to ask the witness if he signed that letter.

The Witness.— I did.

Senator Duhamel.— Mr. President.

The President.— Senator Duhamel.

Senator Duhamel.— I would like to ask the witness if it was customary for him to sign Mr. Sulzer's signature when a member of Congress? A. Not as an official act but I signed his name to correspondence.

Senator Duhamel.— Franks?

The Witness.— Franks.

Senator Emerson.— Mr. President, should I be permitted to ask him if he would write that once more on a piece of paper?

The President.— Yes.

Mr. Hinman.— Come down at a desk where you can write it.

(The witness sat at the lawyer's table and signed a paper making four signatures, two in ink and two in lead pencil.)

Mr. Hinman.— Does the court now want it passed around?

The Court.— Yes. Let the stenographer mark it.

Mr. Hinman.— We ask to have marked the signatures which the witness has just made upon a sheet of paper of the name of William Sulzer.

The President.— Yes. Now it will be handed around.

(The document was received and marked Exhibit R-1.)

Mr. Herrick.— The letter and the signatures both?

The President.— Yes, both together. They may be wanted for comparison, I suppose.

Senator Herrick.— Mr. President, I should like to ask the witness a question.

The President.— Well, Senator, will you please defer your question until after the letter and the signature he has made now is handed to the members of the Court.

Senator Herrick.— Certainly.

Senator Emerson.— I would like to ask a question, if I may be permitted.

The President.— Hadn't you better defer the question until the end of the inspection?

Senator Emerson.— The letter must come back then.

The President.— What is it?

Senator Emerson.— On the original letter I understand the witness swears he was at 115 Broadway all during October, at the date of this letter, October 22d. I notice in the original letter it says it was sent en route. What is the object in putting en route on if it was sent in the city?

The Witness.— Well, the papers were full of the Governor's campaign trip throughout the State at the time, and I knew the bank officials were familiar with that.

The President.— Let us finish the inspection.

Mr. Herrick.— Won't you let him complete his answer?

The President.— I think we will reserve the Senator's question until the conclusion of the inspection.

Mr. Herrick.— It is half answered.

The President.— Even then. Then he shall give the rest of the answer then. You must proceed orderly.

Senator Emerson.— One more question, Mr. President.

The President.— The Presiding Judge will have to ask the Senator to refrain from interrupting.

Senator Emerson.— I was going to ask for a signature that is not disputed by Mr. Sulzer, if I may be permitted to see that, a signature of Mr. Sulzer's that is not disputed.

The President.— That we will get after, Senator, if you will wait until this is done.

Senator Carswell.— I rise partly by reason of the last interruption. I think it will expedite matters if the members of the Court

refrain from interrogating witnesses until both counsel are through with him.

The President.— Yes, Senator Carswell.

Senator Carswell.— Mr. President, there is a rule, Rule 4 of the Court, which expressly provides that interrogating a witness by members of the Court shall not take place until after counsel on both sides have examined and arise to a point of order in that respect.

The President.— I thank you for calling my attention to it, Senator Carswell. Read the question you say you partially answered and finish the answer if you wish to do so now.

Mr. Hinman.— Does your Honor refer to the one of Senator Emerson or the one I was asking?

The President.— I did. If you wish to, let it go as it is, why go on with your examination.

Mr. Hinman.— If you will read the question asked by Senator Emerson and which had been partially answered by the witness, please.

The President.— What are you going to do?

Mr. Hinman.— I am going to ask the stenographer to read Senator Emerson's question and the portion of the answer which had been given.

(The stenographer thereupon read the question as follows): "Senator Emerson: I notice an original letter that says 'en route.' What is the object of that 'en route' on that? A. Well, the papers were full of the Governor's campaign trip through the State at the time and I knew the bank officials were familiar with that."

The President.— That appears to answer it.

The Witness.— And in order to make it appear as if coming from Mr. Sulzer personally I added that "en route" at the head of the letter.

Q. How long had you been in the habit of signing or accustomed to sign William Sulzer's name to letters? A. About eight or nine years maybe.

Q. And prior to this 22nd of October, 1912, had you been endorsing his name with pen on some of the checks which had been received? A. Yes, sir.

Q. And had you also been endorsing his name on checks received there by placing a rubber stamp thereon?

The President.— He said that already.

Mr. Hinman.— I thought so, but my associate thought it had not been covered. I thought it had. Your recollection agrees with mine on that.

Q. Did you have a power of attorney from William Sulzer at any time? A. Yes, I had a power of attorney from him which was given to me in 1906.

Q. What was the cause of Governor Sulzer giving you a power of attorney at that time? A. He was going up to Siberia —

Mr. Stanchfield.— I object.

The President.— I do not see its materiality.

Q. Was it a general power of attorney? A. Yes.

Mr. Stanchfield.— Where is it, let us see it.

Mr. Hinman.— I was going to ask it if you permit me.

Q. Have you looked up and endeavored to find that power of attorney? A. Yes.

Q. Has that power of attorney ever been revoked? A. No, sir.

Q. Was that a general power of attorney? A. Yes, sir —

Mr. Brackett.— One moment. That is incompetent.

The President.— He has to state what the substance of it is and literally what its contents were.

Mr. Brackett.— Whatever its contents were it certainly was not a sufficient power of attorney to give another power of attorney in his name.

The President.— That can be argued by members of the Court. I will let you state it. He said it was a general power.

Mr. Hinman.— Yes.

The President.— That may be. Proceed.

Q. In making this report, this statement Exhibit 3, does that include all the moneys which have been received by you during the campaign and deposited in the bank? A. No, sir.

Q. Did you know at the time when you made it up that it didn't contain a statement of all the moneys that you had deposited in the bank? A. I did.

Q. What moneys, if any, did you leave out and why; what moneys received did you leave out and why?

Mr. Stanchfield.— I object to that as irrelevant and incompetent.

The President.— Read the question.

The stenographer thereupon read the question as follows: "What moneys, if any, did you leave out and why; what moneys received did you leave out and why?

Mr. Stanchfield.— What he did doesn't make any difference. Sarecky isn't yet on trial.

Mr. Hinman.— Nor soon.

The President.— One moment, gentlemen. Now stop these remarks. Now read the question, stenographer.

The stenographer thereupon read the question as follows: "Q. What moneys, if any, did you leave out and why; what moneys received did you leave out and why?"

Mr. Stanchfield.— He is not on trial.

The President.— I do not see its materiality.

Mr. Hinman.— He made up the statement and more moneys were received than appear here, received by him and put in the bank.

The President.— Well, afterwards, if they attempt to impeach him, then it can be competent but not at this stage.

Mr. Herrick.— It is not a question of impeaching him. It is not a question of establishing his credibility as a witness. But it is a question of showing what was done with the moneys deposited in the Mutual Alliance Trust Company to his account with those campaign moneys and why he didn't include them in this statement.

The President.— Why is that material? What does it show?

Mr. Herrick.— If the court will hold it is of no consequence counsel for respondent are perfectly content.

The President.— If afterwards he is impeached he can give the reason for leaving it out.

Mr. Herrick.— It appears that that is the fact. If you say that is of no consequence —

The President.— We will let you have it. You can answer why you left out the other money.

The Witness.— Because I did not have any record before me at the time I made up the statement to cover those other items.

By Mr. Hinman:

Q. Had some of the moneys which you had deposited during the campaign in the Mutual Alliance Trust Company been used for purposes other than campaign purposes? A. Yes, sir.

Mr. Stanchfield.— I object to that as leading, and incompetent and improper.

The President.— Read the question.

The question was read by the stenographer as follows: "Had some of the moneys which you had deposited during the campaign in the Mutual Alliance Trust Company been used for purposes other than campaign purposes."

The President.— Objection is overruled. Let him answer.

A. Yes, sir. They had been used for purposes other than for campaign purposes.

By Mr. Hinman:

Q. For what purposes had those moneys been used?

Mr. Stanchfield.— The same objection, again.

The President.— Objection overruled.

A. I used part of that money in settling a suit out west that had been brought against Mr. Sulzer during the campaign.

Q. Where was William Sulzer when you did that? A. I cannot recollect just where he was.

Q. Did you confer with him, or counsel with him before you did that? A. I did not.

Q. You did that then, I take it, without his knowledge? A. Without his knowledge.

Q. What other purposes had moneys deposited by you in this bank account, been used for, moneys which do not appear in this campaign statement? A. I cannot recollect now just for what purposes I did use it, but I know I used some for purposes which were not for campaign purposes. I think I also paid for postage on a number of books that went out of this state; that is, to the best of my recollection.

Mr. Hinman.— Nothing further.

Cross examination by Mr. Stanchfield:

Q. Mr. Sarecky, there is one matter that I would like to clear up before I take up in detail your cross examination, and that has to do with the exhibit 29, marked "En Route, October 22, 1912." You have your attention, have you not, upon that letter? A. I have.

Q. With whom, at the Mutual Alliance Trust Company office, did you have any conversation in regard to endorsing Governor Sulzer's name upon checks you presented there payable to his order? A. I don't think that I personally had any conversation with anybody in that bank regarding that matter. One of the clerks —

Q. Now, just a moment, that answers the question. A. Yes, sir.

Q. Do you mean that no employee or person connected with the Mutual Alliance Trust Company, talked with you upon that subject? A. To the best of my recollection, no, nobody spoke to me about that subject.

Q. Who is the president of that concern? A. I know him by sight, but I do not remember his name.

By the President:

Q. Was he on the witness stand; do you remember seeing him on the witness stand? A. No, sir, I was not here then.

By Mr. Stanchfield:

Q. Would you recognize his name if it were given you? A. Yes, I would.

Q. Is his name Floyd? A. I think it is.

Q. Webb Floyd? A. Webb Floyd.

Q. Did he not speak to you upon the subject of your depositing in the Trust Company checks payable to the Governor's order? A. No, sir, he did not.

Q. And you tell us then that no one connected with the Trust Company ever spoke to you about the endorsement upon checks you were depositing there, payable to his order? A. No, sir, nobody ever spoke to me about it.

Q. Well, you emphasize "me." Did they speak to someone else, who, in turn, spoke to you? A. They did.

Q. Who was it that spoke to you? A. One of the boys who was helping me in my work.

Q. Which boy? A. I do not remember whether it was Mr. Cisner, Mr. Weller or Mr. Horowitz, because all of them had made deposits.

Q. Well, was it one of the three? A. It was one of the three.

Q. Had you been in the habit of sending one or the other of these three, Weller, Cisner or Horowitz, with the checks to the Mutual Alliance Company, to deposit them? A. Yes, sir.

Q. And did one of them call your attention to the fact that the

Trust Company wanted some authority for you to endorse the Governor's name? A. Yes, sir.

Q. About when did you receive that information with reference to this letter, dated October 22, 1912? A. It may have been about two weeks, I think, after I had been depositing there money —

By the President:

Q. No, that is not the question; the question is with reference to the date of the letter. A. Oh, about two days before I gave them this letter, I think.

By Mr. Stanchfield:

Q. That would be on or about October 20th? A. Yes, sir.

Q. Now, at that time, you had been for years endorsing the Governor's name to papers of one sort or another, hadn't you? A. Yes, sir.

Q. You never had signed his name "William Sulzer, per Louis A. Sarecky," had you? A. I do not think I did.

Q. You never had signed his name "By Louis A. Sarecky?" A. No, sir, I do not think I did.

Q. When you did sign it, you did sign it "Wm. Sulzer," didn't you? A. I did.

Q. And you have tried for years to imitate the handwriting of the Governor, had you not? A. I did.

Q. You have signed that name time and time and time again just as closely as you could imitate his original signature? A. Yes, sir.

Q. That was your purpose in signing it, was it not? A. Yes, sir.

Q. So that whoever received a communication signed in that way would believe that it was signed by him, in person? A. Yes, sir.

Q. Now, when you received word from the Mutual Alliance Trust Company that they wanted some authority from Congressman Sulzer, at that time, for you to indorse his name, did you communicate with Governor Sulzer? A. No, sir, I did not.

Q. Did you let him know in any way that the Mutual Alliance Trust Company wanted that authority? A. I did not.

Q. So that when you sent over this exhibit, marked October 22, 1912, to the Mutual Alliance Trust Company, by whom did you send it? A. I went there myself with it.

Q. When you got there with this exhibit, October 22, 1912, whom did you see? A. I think I saw the paying teller.

Q. Do you recollect his name? A. No, sir.

Q. Did you hand him this paper? A. I did.

Q. Did you hand him this paper, Exhibit 29? A. To the best of my recollection I did.

Q. You had put on that letter the words "en route?" A. I did.

Q. The typewriting on the face of this paper is your typewriting? A. The typewriting is my typewriting, yes, sir.

Q. The signature "Wm. Sulzer," is your signature? A. I signed that.

Q. Designed to convey to them the impression that it was the signature of William Sulzer? A. Yes, sir.

Q. You intended they should believe it was the signature of Governor Sulzer? A. Yes, sir.

Q. You put on the face of this paper the words "En route," so that if they noticed in the newspapers that he was out of the city, they would see by this letter that it came from him, wherever he might be? A. Yes, sir.

Q. And you did all that, knowing from this bank that they wanted from the Governor authority in you to indorse these checks? A. Yes, sir.

Q. In other words, you presented to that bank a deliberate forgery, didn't you? A. Well —

Q. Answer that question.

Mr. Herrick.— Wait a minute.

Mr. Stanchfield.— No, I submit, I am entitled to an answer. What is the ruling, is the objection sustained?

The President.— Objection sustained. You can get the facts. You can ask the question as to the facts.

Q. I mean, you personally.

By the President:

Q. Did you not give it to this teller with the intention of deceiving him, so that he would think that was the personal letter of the respondent here, authorizing you to do the act? A. That was my intention, when I gave it to him.

By Mr. Stanchfield:

Q. Mr. Sarecky, were you in court yesterday when Senator Hinman made the opening presentation of the respondent's case here? A. I was.

Q. You heard every word of it? A. Not every word of it. Some of it I did not hear on account of the rattle in the streets.

Q. You heard the great bulk of it then? A. Yes, I did.

Q. Have you been in pretty constant touch with him, or with Mr. Clark, or some of the lawyers in preparing this case, to furnish him material upon which to make the opening? A. He asked me to write my statement of the story and all out and I wrote it out and handed it to him.

Q. Precisely. Did you notice that he stated yesterday that among the assistants in Mr. Sulzer's office during this campaign was a Mr. Hanify? A. Yes, sir.

Q. You have not named Mr. Hanify? A. It slipped my mind for the moment.

Q. Will you answer my question? You have not named Mr. Hanify? A. No, I did not.

Q. Mr. Hanify was there during that compaign, wasn't he? A. He was. Part of the time.

Q. And you became, during that campaign, acquainted with Mr. Hanify? A. Yes, sir.

Q. Naturally. A. Yes.

Q. Had you known him before that? A. I knew him before the Governor was nominated.

Q. How long had you known him? A. About a month I think. Maybe a little less.

Q. A month or more before the Governor was nominated? A. Yes, sir.

Q. That is Mr. J. B. Hanify, isn't it? A. John H. B. Hanify.

Q. John H. B. Hanify? A. Yes, sir.

Q. He is the same Mr. Hanify who, about the 10th of July last, became connected with the State Hospital Commission? A. Yes, sir.

Q. In what official relation? A. He was made Secretary to the State Hospital Commission.

Q. You tell us you are 27 years of age, is that right? A. I am going to be 28 this January.

Q. In your 28th year? A. Yes, sir.

Q. Where were you born? A. In Odessa.

Q. New York? A. No, sir. Russia.

Q. Russia? A. Yes, sir.

Q. And about how old were you when you came to this country, if you are able to say? A. I think about two or three years.

Q. Was your father living? A. Yes, sir.

Q. And your mother? A. Yes, sir.

Q. Are they still living? A. No, sir, my father has been dead about 10 or 11 years, may be a little more, I don't remember just how long.

Q. Have you ever been naturalized as a citizen? A. No, I was not naturalized —

Q. Just answer my question? A. No, sir.

Q. Have you ever voted? A. No, sir.

Q. At no time? A. No, sir.

Q. At no election? A. No, sir.

Q. When you came to this country you say you were about 2 years of age? A. About that.

Q. Did you go to school? A. Yes, sir.

Q. Where? A. Public School 75.

Q. In the City of New York? A. Yes, sir.

Q. How long did you continue going to school? A. Until I graduated.

Q. When was that? A. I think in 1898.

Q. How old were you? A. Well, I was then about 14, I think.

Q. Between thirteen and fourteen? A. Around there.

Q. Around thirteen or fourteen was your age? A. Yes, sir.

Q. Did you graduate from the school? A. Yes, sir.

Q. Did you go to any other school after that? A. DeWitt Clinton High School.

Q. In the city of New York? A. In the city of New York.

Q. Day or night? A. Day.

Q. How long did you continue to attend this High School? A. Four years.

Q. And you graduated when? A. 1902.

Q. At that time were you connected with Mr. Sulzer in any way? A. In December of 1902, I became connected with him.

Q. At his office? A. At his office.

Q. That was the same year that you graduated from this school? A. The same year that I graduated from High School.

Q. At that High School did you study stenography? A. I did.

Q. Did you become at that High School sufficiently expert in stenography to act as a stenographer? A. Yes, sir.

Q. When you first entered the respondent's office, in what capacity did you go there? A. As a stenographer and general office assistant.

Q. Where was his office then located? A. At 45 Broadway, New York.

Q. Have you completed your answers? A. New York, 45 Broadway.

Q. Had he any other stenographers in his office at the time? A. I think there was one other fellow there at the time. I can't remember now whether he was in the employ of the Governor or Mr. Frankenstein.

Q. At that time, when you entered his office, you were how old? A. I was around sixteen or seventeen years of age. That is a question of mathematics, about seventeen years I think.

Q. Somewhere, I am not very particular about that, somewhere around sixteen or seventeen years of age? A. Yes, sir.

Q. In this De Witt Clinton High School, what other studies had you followed? A. Well, I took up languages.

Q. What languages? A. French, English, and I think part of the course was in German but I don't remember now.

Q. What books in French did you read in that school? A. I had Chardenelles French Book, if I remember correctly. That is a long time ago, Chardenelles French.

Q. Have you studied French since? A. I have been reading it. I have not studied it.

Q. You have been reading it? A. Yes, sir.

Q. What have you read in French? A. A French newspaper.

Q. You have occasionally taken up a French newspaper and read it? A. Yes, sir.

Q. And also French books? A. Yes, sir.

Q. What French books? A. L'Abbaye.

Q. Who is the author of it? A. Halevy.

Q. He is the author of what? A. L'Abbaye, de Constant.

Q. You have read that in the original? A. Yes, sir.

Q. Have you read anything else in French? A. I have read poetry.

Q. What poetry? A. I don't remember the name.

Q. Can you tell the names of a single French poet whose poems you ever read? A. I will recite you the poems; I don't remember who wrote them.

Q. But you cannot tell the author? A. No, sir.

Q. Can you speak French? A. I do.

Q. Have you read German as well? A. I have.

Q. What books in German have you read? A. I cannot think of any for the moment.

Q. Does that cover then, your connection with French and with German fairly from your standpoint? A. Oh, I speak German very often, almost daily, and French whenever I have occasion to speak it.

Q. When you say that you speak German, what dialect, what do you mean by saying you speak German? A. I mean German in the fullest sense of the word, not Yiddish; German.

Q. I understand it. German. Do you likewise speak Yiddish? A. I do.

Q. Have you studied any other language? A. I have, but I am not thoroughly familiar with it. I have studied Spanish.

Q. Have you read anything in Spanish? A. No, sir.

Q. Can you speak Spanish? A. I can understand it, but I cannot speak it very fluently.

Q. Have you told us now your experiences in these different languages, and all of them? A. What do you mean by experiences?

Q. The extent to which you have studied them, to which you had read them, or in which you speak them? A. I speak German.

Yiddish and English daily. Most of the dialects there are in the Yiddish language, I have occasion to use. French I use very seldom, because I don't come in contact with many French people. I have home in my library several French books. Occasionally I read them. I have a French dictionary and I often — not often, once in awhile, I refer to that, and I speak German, as I said, almost daily.

Q. Yes. Have you stated now the extent of your acquirements in French and German, the different dialects and Spanish? A. I will omit Spanish, because, as I say, I don't speak Spanish.

Q. We will leave Spanish out? A. Yes.

Q. You have stated just what you have done to acquire familiarity with and knowledge of those languages, have you? A. Yes.

Q. Have you ever attended any school in particular, other than the high school of which you have spoken, to study those things? A. No, sir.

Q. Have you ever studied law? A. Yes, sir.

Q. Where? A. At the New York University.

Q. How long were you engaged in the study of law? A. I studied it for two years.

Q. Covering what period? A. I think 1904 and 1905, or may be — I think it was 1904 and 1905.

Q. Have you ever applied for admission to the Bar? A. No, sir.

Q. In 1902. We will begin there. You say you went in Governor Sulzer's office? A. Yes.

Q. As stenographer? A. Yes, sir.

Q. How long did you continue as a stenographer? A. Well, I was a stenographer up to the time he went up to Albany as Governor.

Q. What other functions, if any, did you perform, aside from that of a stenographer? A. When he was in Washington, I used to open all the correspondence, answer it, or forward any letters to him there. I would see visitors and do ordinary office work as it came up.

Q. Were there any other clerks in the office besides you to look after his matters? A. No, sir.

Q. In other words, you had them in your undivided care? A. Yes, sir.

Q. What salary, in the years 1911 and 1912, were you being paid? A. I was being paid $1,500 and $1,600 a year.

Q. Just what do you mean by that? A. One year I was receiving $1,500, and the other I think $1,600.

Q. You mean in 1911 your salary was $1,500? A. Yes, sir.

Q. Is that what you mean by that remark? A. Yes, sir.

Q. And in 1912 it was increased to $1,600? A. Yes, sir.

Q. How were you paid?

Mr. Hinman.— Objected to on the ground it is immaterial and irrelevant.

Mr. Stanchfield.— It will get to be very material.

Q. How are you paid?

Mr. Hinman.— Objected to on the ground it is —

The President.— Let him answer.

The Witness.— I was paid by check and by cash.

Q. And when you were paid by check, by whose check do you mean? A. Sometimes I would get Mr. Sulzer's check, and at other times I would receive checks from other people.

Q. For your salary? A. Yes, sir.

Q. When you say sometimes you would receive checks from other people for your salary, did you refer to Mr. Cisner? A. Yes, sir.

Q. And do you refer to Mr. Mackoff? A. Yes, sir.

Q. Mr. Cisner was a clerk, wasn't he, of the Committee on Foreign Affairs in Congress?

Mr. Hinman.— That is objected to on the ground it is immaterial and irrelevant.

The President.— One moment.

Mr. Stanchfield.— It is not immaterial. It will get to be very material.

The President.— Counselor, don't comment. If you want to make a statement, address the Court.

Mr. Stanchfield.— Pardon me. I was addressing simply the briefest sort of argument.

The President.— Then turn and address the court.

Mr. Stanchfield.— I beg your pardon. I haven't the slightest —

The President.— Read the question. You see the presiding judge doesn't hear what you said.

(The stenographer read the question as follows: "Mr. Cisner was the clerk, wasn't he, of the Committee on Foreign Affairs, in Congress?"

The President.— What is the object of it?

Mr. Stanchfield.— The witness has stated that a part of his salary was paid by this man Cisner. I have a right to get at where his salary came from, who paid it.

The President.— I think not. Sustained.

Q. You say that the salary was paid in part cash and in part checks? A. No, I say sometimes it was cash and sometimes it was by check.

Q. Put it that way. Sometimes check and sometimes cash? A. Sometimes both.

Q. Sometimes both. Did you also get your salary at times in checks from a man by the name of Mackoff?

Mr. Hinman.— Objected to on the ground it is immaterial and irrelevant.

The President.— Sustained.

Q. When you got your salary in cash, who paid it to you?

Mr. Hinman.— Objected to on the ground it is immaterial and irrelevant.

The President.— You may say that. Answer that.

The Witness.— Sometimes the Governor, Mr. Sulzer, would pay me; sometimes Mr. Mackoff and sometimes Mr. Cisner.

Q. Some one of the three paid you this salary? A. Yes, sir.

Q. Didn't Cisner regularly pay you from about March, 1911, until December, 1912, $83.33 a month?

Mr. Hinman.— Objected to on the ground it is immaterial and irrelevant.

The President.— How is it relevant, Mr. Stanchfield?

Mr. Stanchfield.— I want to show where he got his salary from.

The President.— How does that affect this?

Mr. Stanchfield.— Because it affects the credibility of the witness.

The President.— I don't think so.

Mr. Stanchfield.— My contention is this, that during the period from March, 1911, to December, 1912, Mr. Cisner, the clerk of the Foreign Affairs Committee at Washington, Mr. Mackoff, the assistant clerk of the Foreign Affairs Committee at Washington, the salary of Cisner being $2,500 by law, and the salary of Mr. Mackoff being $1,800 by law, regularly paid in New York for services which this witness rendered the respondent, $83.33 a month, from Cisner, and $50 a month from Mackoff.

Mr. Hinman.— Objected to on the ground it is immaterial and irrelevant.

The President.— I do not see how that is competent. It does not affect this witness' credibility, and as far as it may have an effect on the respondent, you can ask him when he is on the stand. This is a collateral matter, of which you can only inquire of him.

Mr. Stanchfield.— The contention we make is that the testimony affects the credibility of this witness.

The President.— I am frank to say I cannot see that it does.

Q. Was your salary paid monthly?

Mr. Hinman.— Objected to on the ground it is incompetent, irrelevant and immaterial.

The President.— Objection sustained.

Q. Was you salary continued at the rate of $1,600 a year until the end of the year 1912? A. No, it was until about the end of February.

Q. 1912? A. 1913.

Q. No, my inquiry is down to and including December, 1912, did your salary continue at the rate of $1,600 a year? A. Yes, sir.

Q. Now, on January 1st, the respondent became Governor? A. Yes.

Q. Did you come to Albany with him? A. No, sir.

Q. You remained in New York? A. Yes, sir.

Q. Was there any change made in your salary at that time?

Mr. Hinman.— Objected to on the ground that it is incompetent, irrelevant and immaterial.

The President.— This comes to another thing; this relates to the respondent here, it will be admitted.

Q. Was there any change made in your salary at that time? A. I do not think in the amount I received but in the method of my receiving it, or as to the sources from whom I received it.

Q. Well, as to source, after January 1st, 1913, you received it directly from the Governor, didn't you?

Mr. Hinman.— Objected to on the ground it is immaterial and irrelevant.

The President.— He may show his relations. He is testifying on the respondent's behalf; I think it is competent.

A. To the best of my recollection I received it from Governor Spriggs.

Q. How long did you receive your salary from Governor Spriggs? A. I received checks from him occasionally ever since I have known Governor Spriggs.

Q. No, my inquiry is after January 1, 1913, how long did you receive your salary from Governor Spriggs? A. Up to about March 1st.

Q. March 1, 1913? A. Yes, sir.

Q. Now, did a change take place on March 1st? A. It did.

Q. What was it? A. I was appointed Special Clerk I think is the title of the place in the Adjutant-General's office.

Q. At Albany? A. Yes, sir.

Q. And did that change in your position require you to move to Albany? A. Well, I don't know; I never performed any duties as Special Clerk. I resigned on March 15th.

Q. 1913? A. 1913.

Q. You resigned this place in the Adjutant-General's office? A. I think I did on March 15th.

Q. Then what happened? A. Then I was appointed confidential stenographer to the Governor.

Q. Did that bring you to Albany to reside? A. Did what?

Q. Did that bring you to Albany to reside? A. Well, it did, yes, sir. The nature of the work I was to perform would necessarily bring me in Albany, or I suppose any other place the Governor would send me to.

By the President:

Q. He asked if you changed your residence? A. Not then.

By Mr. Stanchfield:

Q. What I want to know is when you became the confidential stenographer of the Governor whether you removed your residence to Albany? A. Not immediately.

Q. Did it still continue in Brooklyn? A. Yes, sir.

Q. Did you come to Albany about the middle of March to perform the duties of that office? A. No, sir.

Q. When did you report here for work? A. I think the latter part of March or probably the first part of April.

Q. Of the current year? A. Yes, of the same year.

Q. Well, at that time did you take up your residence here? A. I did.

Q. Now, from that time, you put it about the 1st of April, have you made Albany your home? A. My real home has always been in Brooklyn, but I lived up here; I had two homes.

Q. Have you lived in Albany since that time? A. Every day I was here I was here.

Q. Had you any particular home or residence here? A. No, I stopped at —

Q. When you were in Albany where did you make your living headquarters? A. At No. 9 South Hawk street.

By the President:

Q. Did you move up your belongings? A. No, sir.

Q. You came up here from time to time? A. I came up here alone.

Q. You say you are married? A. Yes.

Q. Have you children? A. No, sir.

Q. Did your wife come up or did she remain in the house at Brooklyn? A. She remained at home.

By Mr. Stanchfield.

Q. What was your salary fixed at? A. Two thousand five hundred dollars.

Q. In this place as stenographer? A. Two thousand five hundred dollars a year.

Q. When did you change again your employment? A. I think July 18th.

Q. What? A. July 18, 1913.

Q. Between the 1st of April, 1913, and July 18, 1913, were you at the executive chamber every day? A. No, sir.

Q. How much time were you there? A. Whenever I was in Albany here at the Executive Chamber for the whole working day.

Q. How much were you in Albany? A. I had been assigned to work with Mr. Hennessy.

Q. How much were you in Albany? A. I cannot remember the exact time.

Q. Haven't you any notion at all about how much time? A. Let me just think for a moment.

By the President:

Q. One day a week or two days a week or a day every other week or what? A. I will think for a moment and I will proba-

bly tell you the exact period. I think I was in Albany all the time up to about May 15th, with the exception of Sunday.

By Mr. Stanchfield.

Q. Then what occurred? A. Then I went out on road work with Mr. Hennessy; I was assigned to work with Mr. Hennessy, and I went out examining roads as stenographer to the engineers who were making the investigations.

Q. That was about the middle of May? A. About the middle of May.

Q. And did you continue at that sort of work until about the 18th of July? A. Oh, a little less than that, not quite as long as that; about the 5th or 6th of July; the 4th of July was the last day that I was out on the road.

Q. During that period of time from the middle of May until the 5th or 6th of July when you were out upon the road were you still attached to the Governor as his private stenographer? A. Yes, sir.

Q. Was there any change made in your compensation at that time? A. No, sir.

Q. It remained the same? A. Yes, sir.

Q. Now, you fix a date along about the 5th or 6th of July when you stopped this so-called road work? A. Yes, sir.

Q. Into what employment did you then go? A. I went back into the Executive Chamber.

Q. In the same position? A. Yes, sir.

Q. Now, how long did you remain in the Executive Chamber engaged in this kind of work? A. Until I was appointed on July 18th as lay deputy in the Bureau of Deportation.

Q. Did you see the Governor every day during that period? A. I think I did.

Q. You were doing stenographic work for him, weren't you? A. I was doing stenographic work for Mr. Platt or whoever wanted it.

Q. Whoever wanted it in the Executive Chamber? A. Yes.

Q. Now, at the time, the 3rd, the 4th or 5th of July, it was becoming bruited around in the newspapers, was it not, that the

Frawley Committee were making an investigation into the Governor's campaign accounts?

Mr. Hinman.— Objected to on the ground it is immaterial and irrelevant.

The President.— I think he may use that to call his attention to the fact. Overruled.

A. I do not recollect whether it was or not.

Q. Are you sure of that? A. I am. I cannot say whether it was during that period that it was bruited about, as you say.

Q. When did you first see it? A. It was forcibly called to my attention —

Q. No, no, I am not talking about forcibly; we will get at the forcibly later. When did you first have it called to your attention? A. When I was served to appear before the Frawley Committee, I think it was first called to my attention then.

Q. Do you mean to say under your oath that you had not heard that talked about and read of it in the newspapers before you were served with a subpoena? A. I cannot say I did not hear it talked about; you say when it was called to my attention.

Q. When did you first hear it talked about? A. I think when the Frawley Committee started holding hearings.

Q. That was about the 2nd of July, wasn't it? A. I don't remember the exact date.

The President.— You can fix that by another witness if he does not know.

Mr. Stanchfield.— I will get at it from him.

Q. Wasn't it just before the 4th of July? A. What was before the 4th of July?

Q. That the Frawley Committee commenced its hearing? A. I cannot recollect whether it was or not.

Q. Do you know where you were the 5th of July? A. If you tell me on what day the 5th fell I could perhaps tell you much better.

Q. Saturday. A. The 5th of July I was in New York; if I remember correctly I was in New York.

Q. Were you in the Governor's office at 115 Broadway? A. No, I was home.

Q. Are you sure you were not in the offices? A. I may have been there for a few moments, but the most of the time I spent at home.

Q. I did not ask you how much of the time you were there? A. I may have been there.

Q. Didn't you see Governor Spriggs there? A. I don't remember whether I did or not.

Q. I am speaking now of the day after the 4th? A. Yes, I do not remember whether I saw him that day or not.

Q. What were you doing at the office that day? A. Well, nothing particularly so far as I can remember.

Q. Were you packing up any papers? A. No, sir, I do not think I was.

Q. Didn't you take away from that office a package of papers with you? A. On the 5th of July?

Q. Yes. A. Not to my recollection.

Q. That is as strong as you want to put it? A. Just as strong as I want to put it.

Q. Did you come to Albany the next day? A. I don't remember; I may have come to Albany the next day.

Q. And didn't you go direct to the Executive Mansion; that would be the 6th of July? A. Well, I may have done that.

Q. Didn't you have a package of papers with you? A. I don't recollect whether it was on that particular day or some other day.

Q. You do have in mind that you did make up a package of papers in the Governor's office some time in July, didn't you? A. Yes, sir.

Q. And that you took them yourself to the Executive Mansion in Albany and delivered them to him? A. I do.

Q. Did you make up that package of papers yourself? A. Yes, sir, I did.

Q. What were they? A. As near as I can remember, it was some old stock book of some company he asked me to bring up, and also a stock ledger.

Q. Yes. A. Then there was some old letters, I think some old letters were in it, too, and some lists which he wanted.

Q. Lists of what? A. He had a regular mailing list to whom he sent out literature.

Q. Yes. A. And I brought that up.

Q. Is that all? A. To the best of my recollection, that is all.

Q. And you delivered those to him some time in July? A. I think it was some time in July.

Q. Now, Mr. Sarecky, didn't the Governor preserve regularly, and all the time, the letters that he received during his campaign for Governor? A. He had them bound, I think—

Q. First, we will get at the preservation of them. Didn't he keep them? A. We kept them for him.

Q. You kept them for him? A. Yes, sir.

Q. Letters and telegrams? A. Letters and telegrams.

Q. Those were letters from people who were sending him words of congratulations? A. Yes, sir.

Q. They were also letters from people, that contained contributions of money? A. Yes, sir.

Q. All of those letters were bound up in books, were they not? A. Yes, sir.

Q. How many volumes did they make? A. I think about twelve or fifteen. Maybe a little more or less. I can't remember the exact number.

Q. Those books were taken to the Executive Mansion, weren't they? A. I don't know anything about that.

Q. What did you do with them when you had them bound up? A. They were bound up, if I remember correctly, in Washington, and they were sent direct from Washington to the Executive Mansion. That is to the best of my recollection.

Q. When last did you see those volumes in the Executive Mansion. A. I think about a week ago.

Q. I am perfectly right in saying that in those volumes would be all letters that contained financial contributions, am I not? A. No, sir. I don't think they contain all letters. That is, I would not state under oath, because two or three, maybe four, have been lost.

Q. Did they contain then, substantially — A. Substantially.

Q. (Continuing) All of the letters containing financial contributions to his campaign for Governor? A. Substantially, I think they contained almost all of them.

Q. Have you been, during the preparation of this case, instructed by anyone to prepare from those books a list of contributions that were made to the Governor for campaign contributions in the campaign of 1912? A. No, sir.

Q. Has anyone made such a list, to your knowledge? A. Not to my knowledge.

Q. Hasn't your attention been directed to an examination of those books within the past week or ten days, or two weeks? A. I saw them scattered on the floor in the Executive Mansion, in one of the rooms of the Executive Mansion. That is the only attention that has been called. That is the only —

Q. Were you requested, in any way, to go through them or examine them to ascertain the extent or the number of contributors to his campaign fund in the fall of 1912? A. No, sir; I was not requested.

Q. As is suggested to me, irrespective of whether it was suggested to you, or you were requested to do it, did you in fact, do it? A. No, sir, I did not.

Q. Could one, from those books, prepare to-day a list of the names of the contributors to his campaign in the fall of 1912, and their amounts? A. Well, I don't know what those books contain. I haven't examined them.

Q. They did contain, you stated to me, with possibly exceptions of three or four that might have been mislaid, all the letters of contribution to him?

Mr. Hinman.— Let me make an objection to this on the ground that, according to the witness' statement, those books were bound in Washington, and as to what was in them, as appears from his evidence, he could not know; therefore, they are incompetent.

The President.— Let it go in. He says they contain substantially all the letters.

Mr. Stanchfield.— The Senator evidently misunderstood the witness. The witness says they were sent to the Executive Mansion in Albany and he saw them within a week.

Mr. Hinman.— But he never examined them.

The President.— If they were intact, they would contain necessarily nearly all.

Mr. Hinman.— No.

The Court.— I don't know as it is necessary to get the witness' opinion on that.

Mr. Stanchfield.— I am not so keen about his opinion as I am about the fact of showing the existence of those letters in the respondent's custody.

The President.— I think he has told you all. He told you that those contained substantially all, with a few exceptions that might have been lost, substantially all, and he says those, he saw the books up there in the Executive Mansion within some short period, I think he said within a week, I don't remember.

Mr. Stanchfield.— Within a week.

Mr. Hinman.— I think we have misunderstood the witness. The letters were, of course, received during the campaign in New York, and they were sent to Washington and bound. I don't suppose this witness knows, because he has not examined them, I take it from the testimony.

The President.— No, I think we will let the thing stand as it is now, and you can argue from it.

By Mr. Stanchfield:

Q. During this period of time between the fall of 1912, and the 18th of July, 1913, had you seen Mr. Hanify from time to time, the secretary of the Hospital Commission? A. What was the period covered, Mr. Stanchfield?

Q. From the fall of 1912 to the 18th of July, 1913? A. I saw him occasionally, yes, sir.

Q. Of what single language, Mr. Sarecky — you seem to have read considerably, you are familiar with poetry, you have dabbled in French, a little with Spanish, some German, of what language would you say you are a master?

Mr. Hinman.— I object to that question on the ground it is incompetent and improper in form, and is an insult to the witness.

Mr. Stanchfield.— I will change the language.

Q. Of what language would you say you are a master?

Mr. Hinman.— I object to that on the ground it is improper in form.

The Court.— Overruled.

Q. Of what language would you say you are a master? A. I never claimed to be a master of any language.

Q. You admit you are not, don't you, frankly and candidly? A. It depends upon what you mean by a master.

Q. A master ordinarily would convey to you the idea that you knew all about a subject, would it not? A. Yes, I think I am thoroughly familiar with English.

Q. Did you talk with Mr. Hanify about your being the master of five different languages? A. I never used the word "master" in my talk with Mr. Hanify.

Q. Well, did you talk with him about your being conversant or familiar with five different languages? A. I don't think I specified any number. I think I mentioned to Mr. Hanify that I understand English, French, German, Yiddish and two or three jargons of Yiddish.

By the President:

Q. Well, can you talk and carry on a conversation? A. Yes, sir.

By Mr. Stanchfield:

Q. You mentioned that to Mr. Hanify, did you? A. I did.

Q. When did you have a conversation with Mr. Hanify on that subject? A. Why, I think it was some time, a short time before he was made secretary to the State Hospital Commission.

Q. That was the 10th day of July, 1913? A. Must have been some short time before then.

Q. That was after the Frawley Committee had commenced its sittings? A. Yes; I should think it would be in that period.

Q. And it was after you had taken that package, whatever it was, to the Executive Mansion? A. As I say, I don't remember just when I took the package to the Mansion.

Q. Well, it was somewhere, according to your statement, around the 6th of July? A. Yes, sir.

Mr. Hinman.— That is objected to on the ground it assumes something not proven. He simply testified it was some time in July, and has said nothing about it being somewhere around the 6th.

The President.— Objection overruled.

Q. At that time, when you saw Mr. Hanify, around the fore part or middle of July, you put it, do you? A. I think it was about — I cannot place it, but it was the fore part of July.

Q. The forepart of July? Yes, sir.

Q. At that time, had you ever had any practical experience with the handling or care of the insane? A. No, sir.

Q. At that time did you know how many State hospitals there were in the State? A. I think I did.

Q. At that time, I am now talking about? A. Yes, at that time.

Q. Did you know where they were located? A. I knew where the one most important ones were.

Q. Did you tell Mr. Hanify, when you had this talk with him, that you were an applicant for this place in the Department of Deportation of Alien Insane? A. Yes, sir.

Mr. Hinman.— Objected to on the ground it is incompetent and improper, and not a proper subject for cross examination.

The President.— It will be admitted.

Q. You told him you were a candidate for that place? A. Yes, sir.

Q. Did you tell him that you were skilled and well equipped, and possessed peculiar qualifications as a member of that body? A. I think the only qualification —

Q. Did you tell him that?

The President.— I think he may answer.

A. I think the only qualifications I told him that I possessed was my knowledge of the various languages and ordinary office experience.

Q. Well, your office experience had been confined so far as you tell us to that of a stenographer, hadn't it? A. No, I didn't say that, that was part.

Q. And the handling of the mail? A. The handling of the correspondence; seeing people.

Q. Yes. You told Mr. Hanify that? A. I did.

Q. This Dr. Campbell whom you say you succeeded in respondence to an inquiry from Senator Hinman, had been connected with that department for a great many years, hadn't he? A. I don't know just how many years he had been connected with it.

Q. He had for a good many? A. I think so.

Q. And he was a physician? A. He was.

Q. You were the first layman who ever made application for that place? A. No, sir.

Q. Had any layman ever filled it before you? A. I don't think any layman had ever filled it before I did.

Q. Then I will change my question. You were the first layman that filled the position? A. To the best of my knowledge, I am.

Q. So far at any rate as your knowledge goes? A. Yes.

Mr. Stanchfield.— Will the counsel for the respondent, and we make the request, produce for our inspection or introduction in evidence as we may elect, the letters from people giving contributions to the Governor which the witness has indicated were at the Executive Mansion?

Mr. Herrick.— As at present advised we will not.

Q. Mr. Sarecky, had you ever at this time when you had this talk with Mr. Hanify, been in an insane asylum? A. I think I was.

Q. Where? A. In the Kings County Insane Asylum.

Q. Where is that located? A. I don't remember just what street, but it is in Brooklyn.

Q. Have you been there more than once? A. No, just once.

The President.— You mean, of course, as a visitor?

The Witness.— As a visitor.

Q. You never in your life have been inside of a State hospital except upon this one occasion? A. Yes, sir.

Q. And the location of the institution you cannot recall nor the time when you were in it? A. Well, it was about five, may be six years ago, I cannot place it, I just went up there as a visitor.

Q. Had you taken any pains — you seem to have studied a good many things — to familiarize yourself with the nomenclature of insanity?

Mr. Hinman.— I object to that on the ground it is improper in form and casts a reflection on the witness and is an insult to the witness and assumes a fact not proven.

The President.— Make your question strictly interrogatory.

Q. Had you made any study at all of the nomenclature of insanity?

Mr. Hinman.— Objected to on the ground it is improper, irrelevant, immaterial, not a proper subject of cross examination; and on the further ground this appointment has been made by a commission of the State of New York duly constituted and created by law, and the presumption and assumption must be it did its duty.

The President.— I think it is admissible.

Q. The court directs you to answer. A. What is the question?

The question was read by the stenographer as follows: "Q. Had you made any study at all of the nomenclature of insanity?"

Mr. Hinman.— I assume the members of this court know exactly what counsel means. I am frank to say I don't. If counsel is willing to put it in language that a man from the woods can understand —

The President.— I think it is competent. It seems to me you might shorten this up. Do you know anything about insanity at all?

The Witness.— No, not very much.

The President.—That will save dividing it up.

Mr. Stanchfield.— If we possess the power to go at questions in the direct way that you do without objection we could facilitate this in many ways.

The President.— Possibly I have an advantage.

Mr. Stanchfield.— I think you have.

The President.—You might shorten the examination by getting right to the point.

Mr. Stanchfield.— I think you have saved a good deal of time.

The President.—The court will not rule out a leading question if it is not improper, especially when it is addressed to an adverse witness.

Q. Were you in this appointment given any particular station on this Board of Deportation? A. What do you mean by any particular station?

Q. What was your official title? What were you described as? What were you known as? A. I was originally appointed lay deputy.

Q. Lay deputy? A. Yes, sir.

Q. Did you have anything to do with the publication of this handbook of the State Hospital Commission? A. No, sir, I didn't.

Q. Did you ever see it? A. Yes, sir, I have seen it.

Q. I call your attention to page 22 of the handbook of the State Hospital Commission for the year 1913. At the bottom of the page under the head of "Bureau of Deportation" are you the Sarecky who is at the head there of the Board?

Mr. Hinman.— Objected to on the ground it is immaterial and irrelevant.

The President.— Read that.

Q. Are you the Sarecky who appears at the head of the Board or Bureau of Deportation? A. I think that is intended for me.
Q. That is what I want to find out? A. Will you read that?

Mr. Hinman.— Objected to on the ground it is incompetent and improper.

The President.— Let me see what it is.

Mr. Hinman.— Objected to as immaterial and irrelevant.

The President.— (After examining book) Objection sustained. If you want to show that he was put ahead of the two positions I think that might be put as a direct question.

Mr. Stanchfield.— Very well.

Q. Were you at the head of the two regular physicians in that Bureau?

Mr. Hinman.— If the court please, I object on the ground it appears that this witness had nothing whatever to do with getting out this publication by the State Board in Lunacy and he didn't do and had nothing to do with it.

The President.— He is not asking about that book. He is asking if he is the superior of two physicians put under him in that department. Answer, witness.

The witness.— Temporarily I was.

The President.—That is the point. Suspend.

Before the court adjourns, the attention of the Presiding Judge has been called to the fact that a great many persons or several persons come within the court room where they are not entitled to be. The attention of the court has been called by members of the committee whose duty it is to enforce the rules so far as they need regulation. That should not be allowed hereafter, and it

seems to me it must not be allowed hereafter. If we adopt rules we must adhere to them. Part of us may be responsible for it or none of us may be, but some of us may be and certainly nobody else but Senators have any right whatever to even suggest the presence of unauthorized persons and I think under the rules neither Senators nor members of the Court of Appeals have the right. Officers will see the order is strictly enforced.

The Crier.—All witnesses are hereby excused until tomorrow until 10 o'clock.

The President.— The Court will say this to gentlemen here. It will be unpleasant for the court to direct officers to unceremoniously turn out persons not authorized to be present and those who want to avoid that indignity had better favor us with their absence.

The Crier.— Hear ye, hear ye, hear ye, all persons having any further business before this Court of Impeachment held in and for the State of New York may depart hence and appear here to-morrow at 10 o'clock to which time this court now stands adjourned.

Whereupon, at 5:03 P. M., the court adjourned to meet again on Wednesday, October 8, 1913, at 10 A. M.

SENATE CHAMBER,

ALBANY, N. Y., *October* 8, 1913.

Pursuant to adjournment the Court convened at 10 o'clock a. m.
PRESENT:

Hon. EDGAR M. CULLEN, Presiding Judge.

and

THE JUDGES OF THE COURT OF APPEALS,

and

THE SENATORS OF THE STATE OF NEW YORK.

APPEARANCES:

THE MANAGERS:

Same as heretofore.

Counsel for the Managers

Same as heretofore.

Counsel for the Respondent:

Same as heretofore.

The President.— Call the roll.

The Clerk thereupon called the roll and found that there was a quorum present with the following absentees:

Senator Fitzgerald.

Judge Gray.

The President.— Open Court, Crier.

The Crier.— Hear ye, hear ye, hear ye, all persons having business before this Court of Impeachment held in and for the State of New York, give their attendance, and they will be heard.

The President.— The examination was not completed, was it?

Mr. Kresel.— No.

The President.— Witness, take the stand.

Mr. Herrick.— Mr. Sarecky.

LOUIS A. SARECKY, a witness called on behalf of the respondent, having been previously sworn, recalled for further cross-examination, testified as follows:

Cross-examination continued by Mr. Stanchfield:

Q. Mr. Sarecky? A. Yes, sir.

Q. Will you tell me where your residence in Brooklyn has been since you were 21? A. In two places, at 549 Putnam avenue and—

Q. (Interrupting.) Well now, just a moment. When with reference to when you were 21 years of age or became of voting age, did you reside and live at 521 Putnam avenue, Brooklyn? A. 549.

Q. 549? A. Well, all within a period of the last two years.

Q. That is, during the last two years? A. Well, I wouldn't say — about two years — no, no, it wasn't that; it couldn't have been that.

Q. You fix it. I want to know definitely just how long you have lived at 549 Putnam avenue, Brooklyn? A. I have lived there since December, 1912.

Q. Very well. Now, where did you live before that? A. 445 Grand street, New York city.

Q. And how long did you reside at 445 Grand street, New York city? A. I think about four years.

Q. And that was the four years antedating your residence in Brooklyn? A. Yes, sir.

Q. Where did you live before that? A. 190 Henry street, New York city.

Q. And how long did you live at that address? A. I don't know just how many years, but about seven or eight maybe.

Q. Well, you lived there long enough to carry you back of the time when you became of voting age? A. Yes, sir.

Q. And have you ever lived at any other residences than the three which you give us? A. Oh, yes.

Q. Well, where, I mean, since you were 21? A. No, no.

Q. I am not interested before? A. Well, you said—

Q. Simply at those three places since you have been 21? A. Since I have been 21.

Q. What was the one besides Grand street and Putnam avenue? A. 190 Henry street.

Q. That is in New York? A. New York.

Q. You remember, Mr. Sarecky, yesterday, that I asked you whether or no you did not meet or have a conversation with Mr. Webb Floyd, the president of the Mutual Alliance Trust Company, do you not? A. I do. I remember the question.

Q. On the subject of your obtaining for him some authority from Governor Sulzer to permit you to indorse his name upon checks? A. Yes, sir.

Q. And you denied positively that you ever saw Mr. Floyd? A. I did not deny that I ever saw him.

Q. Listen to me. A. Go ahead.

Q. You denied positively that you had any talk with him on this subject, didn't you? A. I did.

Q. Did you have any talk at all — I repeat the inquiry, and I want your attention to it very carefully — did you have any talk at all in the fall of 1912, with Mr. Webb Floyd upon the subject of obtaining from Governor Sulzer for you to indorse his name upon checks? A. To my best recollection I did not.

Q. Well, now, yesterday I asked you this question, referring to Mr. Webb Floyd, "Did he not speak to you upon the subject of your depositing in the Trust Company checks payable to the Governor's order," and did you not answer, "No, sir, he did not"? A. I did.

Q. Was that true? A. It was.

Mr. Stanchfield.— Mr. Floyd, will you stand up for a moment.

Q. Do you know the gentleman whom I call to your attention? A. He is familiar to me. I have seen him at the bank.

Q. Who is he? A. I think he is the president, Mr. Floyd.

Q. That is Mr. Webb Floyd, isn't it? A. I think so.

Q. You are pretty certain of it as you look at him, aren't you? A. Yes, sir; I am pretty certain.

Q. Didn't he have a conversation with you in the fall of 1912, and on or about the 10th or 12th of October, 1912, in which he asked you in substance to procure for him or the bank some authority to endorse Mr. Sulzer's name upon the back of checks made payable to the order of Mr. Sulzer? A. No, sir.

Q. Wait a minute — that you were depositing in that institution? A. No, sir; he did not.

Q. In that conversation, assuming one to take place, did you ask Mr. Floyd whether or no a power of attorney from Mr. Sulzer would suffice?

Mr. Hinman.— That is objected to as incompetent.

The President.— Sustained, but you can ask him this, if you omit the first part of the question, didn't he, in a conversation, tell that witness so and so?

Mr. Stanchfield.— I will meet your Honor's suggestion.

Q. Did you not say to Mr. Floyd at or about the time to which I am calling your attention that you had a power of attorney from Governor Sulzer and asked him whether or no that would suffice? A. I did not.

Q. Neither in language nor in substance? A. No, sir.

Q. And if I understand you, you repeat again positively you never had any talk upon that subject?

Mr. Hinman.— Objected to on the ground it is repetition and incompetent.

The President.— He may answer. You are positive?

The Witness.— I am pretty positive.

Q. Now you are using an adverb or adjective to qualify your answer. Did you put in the word "pretty" by design?

Mr. Hinman.— Objected to on the ground it is incompetent.

Mr. Stanchfield.— Well, this is cross-examination.

The President.— If you will omit the statement of what the witness has done and everything you say to witness put an interrogation point behind it.

Q. Did you mean by the insertion of the word "pretty" in your answer to qualify it or limit it? A. No, I used it just in the ordinary course of language and I repeat I am positive that I do not remember having any conversation with Mr. Floyd in the Mutual Alliance Trust Company's office or any other place relative to my procuring authorization from Sulzer with regard to my depositing checks drawn to his order upon which a rubber stamp endorsement was placed or any other endorsement.

Q. Now you say you are not positive or don't remember?

Mr. Hinman.— Objected to on the ground it assumes facts not proven or incompetent.

The President.— He may ask the witness.

Q. Are you using that, that you are not positive that you don't remember such a conversation to limit —

Mr. Herrick.— One moment, if it please the court.

The President.— Let him finish the question.

Mr. Herrick.— I spoke because he had finished. He had stopped.

Mr. Stanchfield.— I stopped out of courtesy to you.

Mr. Herrick.— Oh no, I did not get up until you stopped.

The President.— One moment. Proceed with the question, counsel.

Q. I ask you whether or not you used the phrase in regard to remembering it to limiting your positive answer heretofore made that you had no such talk?

Mr. Herrick.— One moment. That is objected to as involved and assuming something in his last answer that does not appear.

The President.— I think that is, in substance, what his last answer was.

Mr. Herrick.— No.

The President.— That is my recollection of it.

Mr. Herrick.— I ask to have it read then.

The President.— Have it read.

The stenographer read as follows: "I ask you whether or not you used the phrase in regard to remembering it to limit your positive answer heretofore made that you had no such talk."

Mr. Stanchfield.— Read the preceding answer.

The stenographer read the answer as follows: "No, I used it just in the ordinary course of language and I repeat I am positive that I do not remember having any conversation with Mr. Floyd in the Mutual Alliance Trust Company's office or any other place relative to my procuring authorization from Mr. Sulzer with regard to my depositing checks drawn to his order upon which a rubber stamp endorsement was placed or any other endorsement."

The President.— Now read this question.

Mr. Stanchfield.— I will reform the question.

The President.— Very well.

Q. Did you use the language, "I am positive I do not remember any such conversation" with a view to qualifying or limiting your direct answer that you had no such conversation? A. No, I did not.

Mr. Stanchfield.— That is all on that subject.

Q. You told us yesterday, Mr. Sarecky, that you became attached to or connected with the Bureau of Deportation of the Alien Insane about the 18th of July, 1913? A. About that time.

Q. Where was the office of that Bureau located? A. 1 Madison avenue, New York city.

Q. When did you first go there? A. Shortly after the 18th. I don't remember the exact date.

Q. Do you keep any personal or private memorandum of your goings and comings, or whereabouts? A. No, sir.

Q. Are you able to fix with any distinctness when you did go there? A. No, sir, nothing closer than a few days after the 18th.

Q. How long did you remain connected with that establishment or at that place? A. I don't understand the question.

Q. How long did you report to that place for duty? A. Until I was subpoenaed by the Frawley Committee to come up to Albany.

Q. That was the 23d day of July? A. I think the 26th day of July.

Q. Well, you had been interrogated under oath about that proposition before, hadn't you? A. I don't remember; I may have been.

Q. And the date that you now fix is July 26th? A. That is when I was served, if I remember correctly.

Q. Did you come to Albany in response to the subpoena? A. I did.

Q. Now, from that day until this, have you ever reported at 1 Madison avenue for the performance of service in connection with the Deportation Bureau? A. No, sir.

Q. What is your salary? A. Four thousand dollars a year.

Q. And that is the salary paid to you as lay deputy of the Bureau of Deportation of the Alien Insane? A. Yes, sir.

Q. Have you been drawing that salary right along ever since? A. Yes, sir.

Q. Now, I called your attention for a moment yesterday, to an expedition, on or about the 5th day of July, to the office of Mr. Sulzer, at 115 Broadway, do you remember? A. I do.

Mr. Hinman.— If the Court please, I object to that on the ground that it is incompetent and improper in form, the use of the word "expedition."

The President.— Oh, well, I don't see that there is any —

Mr. Stanchfield.—(Interrupting) Well, a trip or a visit to the office. I will put it in any language, Senator, that you prefer.

Mr. Hinman.— The plain fact is that he was at the office, and you proved what was done.

The President.— Gentlemen, do not let us quarrel about mere names.

Q. Now, did you go to New York upon that occasion in an automobile? A. I don't remember whether I did or not. I have gone to New York in an automobile on several occasions.

Q. Well, now, I am addressing your attention now to the day immediately succeeding the 4th of July, and ask you if you are not able, with that thought in your mind, to say whether you went to New York in one of the Highway automobiles of the State? A. Yes, sir; now that you call it to my attention, I remember the incident distinctly.

Q. And you remember quite distinctly taking your wife and another gentleman and his wife in that automobile down to Coney Island on the Fourth, don't you? A. I don't remember that.

Q. Where did you dine on the night of the Fourth? A. I think we dined in Long Island, if I remember correctly.

Q. Didn't you dine at the Shelburne Hotel? A. I may have dined there; I dined there on several occasions; but I think on the Fourth we were out examining the road, and we stopped off —

Q. (Interrupting) Pardon me — had you completed your answer?

Mr. Herrick.— You stopped off.

The Witness.— I said —

Q. (Interrupting) Will you say under oath —

Mr. Hinman.— (Interrupting) I request that the witness be permitted to complete his answer.

The President.— The witness is sworn. Now ask him the real point of your inquiry, to state it beyond mistake.

By Mr. Stanchfield:

Q. Are you positive beyond mistake that you did not take the Highway automobile of which I am speaking on the 4th of July with your wife and another friend and his wife, and go to the Shelburne Hotel at or near Coney Island for your dinner?

Mr. Hinman.— Objected to on the ground that it is immaterial and irrelevant.

A. I cannot remember positively; I may have done that.

Q. Very well. You said yesterday that at the office when you were collecting up this package that you describe and which you later took to the Executive Mansion, that Governor Spriggs

was with you. Who else was at the office? A. Let me see — there may have been the rest of the office force there at the time.

Q. What was the office force last July? A. It consisted of a young lady and Mr. Horowitz.

Q. Do you recollect whether or no they were there or either of them on that date? A. I cannot recollect.

Q. You are unable to say? A. I am unable to say.

Q. Now, you tell us that you were subpoenaed upon the 26th of July to attend before the Frawley Committee? A. Yes, sir.

Mr. Hinman.— If the Court please, I do not want to keep making these objections. The witness has testified that to the best of his recollection it was July 26th. The question assumes that he has testified that it was on the 26th. The counsel's question always assumes facts not proven, and confusions, and innuendoes—

The President.— If that is the witness' recollection the counsel has a right to assume that. Of course it is not positive. The witness has said that.

Q. I did not mean, Mr. Sarecky, by that question to charge you with a positive statement as to the date. Will you now inform me whether or no it is your best recollection that you were subpoenaed to attend before the Frawley Committee on the 26th of July? A. That is my best recollection.

Q. Where were the sessions of that Committee being—

The President.— Let us get that straight.

By the President:

Q. Do you mean you were subpoenaed on that day or you attended on that day? A. I was subpoenaed on that day.

By Mr. Stanchfield:

Q. Where were the sessions of the Frawley Committee at that time being held? A. In Albany.

Q. In Albany where? A. Room 250, I think. No, it was in the Senate Chamber or the Assembly Chamber of the Capitol.

Q. Now, are you acquainted with a man by the name of Bearman? A. I am.

Q. What is his first name? A. I don't remember his first name. I know his initial is A.

Q. He is a relative of yours, isn't he? A. No, sir.

Q. By marriage? A. No, sir.

Q. Nor by blood? A. No, sir.

Q. Do you know a man by the name of Steinhold? A. I do.

Q. What is his first name? A. Samuel.

Q. Is he a relative of yours? A. Yes, sir.

Q. What is he? A. What do you mean, what is he?

Q. What relation? A. A brother-in-law.

Q. Are you acquainted with a man by the name of Benjamin Hall? A. No, sir, I am not acquainted — well, I might — I don't think I know him, no sir.

By the President:

Q. Do you know of him? A. I know of him, but I do not know him personally.

By Mr. Stanchfield:

Q. Were either Bearman or Steinhold connected with the hospital department, State Hospital Commission, during your connection with it? A. Yes, sir.

Q. When did they take position in it?

Mr. Hinman.— Objected to on the ground it is immaterial.

Mr. Stanchfield.— That question is immaterial. It will be followed by something else.

Q. When did they take position in it?

Mr. Hinman.— Same objection.

The President.— I do not see how it is material. Objection sustained.

Q. Did you request the appointment of either of them? A. I did.

Q. Of both of them? A. I did.

Q. Are they connected with the Commission now? A. No, sir.

Q. When did they resign?

Mr. Hinman.— Objected to on the ground it is immaterial.

The President.— Objection sustained.

Q. Well, it is a fact, isn't it, that neither of them are now connected with the Hospital Commission Department?

The President.— He said that.

Mr. Stanchfield.—Very well.

The President.— Didn't the witness say that?

The Witness.—Yes, sir.

Mr. Stanchfield.—What I was interested in, if the Presiding Judge please, more than the fact, is the date, but if you hold I am not entitled —

The President.— He said that; but you can have the date.

By the President:

Q. Do you remember the date they ceased? A. I think if I remember correctly their services ceased the end of September.

By Mr. Stanchfield:

Q. About the 30th, wasn't it? A. About the 30th.

Q. Did you come to the city of Albany in response to that subpoena immediately? A. No, sir, I did not.

Q. When did you reach Albany in connection with the service of the subpoena? A. I cannot remember; it may have been a day or two or probably one day before I was to appear.

Q. You were served upon the 26th; according to your recollection when did it call for your appearance? A. I think on the 30th.

Q. Between the 26th and the 30th did you see Governor Sulzer? A. I did.

Q. Where did you see him? A. I saw him in the Executive Chamber.

Q. Did you see him as well at the Executive Mansion? A. I don't remember whether I did or not.

Q. You know Mrs. Sulzer? A. Oh, yes.

Q. You were at their home in New York before they came to Albany to live? A. Yes, sir.

Q. And you have often been, have you not, at the Executive Mansion since he became Governor? A. Yes, sir.

Q. You are unable to say, if I understand you, then, whether between the 26th and the 30th you were at the Executive Mansion? A. I am unable to state under oath whether I was or was not.

Q. You had asked Governor Sulzer to give you a better place than that of his private stenographer, hadn't you? A. I had.

Q. Was that office that you had at that time, antedating July 18th, a specially created office for you?

Mr. Hinman.— Objected to on the ground that the statute is the best evidence.

Q. Whose place did you take? A. Don't think I took anybody's place.

Q. You call yourself technically what? A. Lay Deputy.

Q. No, before you became Lay Deputy, while you were attached to the Governor? A. Oh, confidential stenographer.

Q. Confidential stenographer. Now, do you know, I will ask as a matter of knowledge, whether that office or that position was created for you?

Mr. Hinman.— Objected to on the ground it is immaterial and irrelevant.

Mr. Stanchfield.— It is a question calling for his knowledge.

The Witness.— Shall I answer.

The President.— Objection sustained.

Q. When did you first ask Governor Sulzer for a better position than what you were filling, when did you first ask him? A. I think it was the latter part of June.

Q. The latter part of June, 1913? A. Yes, sir.

Q. Did you ask him at that time or any other time — A. No. I want to amend my answer. I think it was the first part of June.

Q. Have you got anything to refresh your recollection? A. I remember now it was shortly after Decoration Day.

Q. Have you got anything better than that to refresh your recollection? A. No, nothing better than that it was shortly after Decoration Day.

Q. Why did you shift from the latter part to the first part of June?

Mr. Hinman: One moment.

The Witness.— Because I remembered more correctly.

Mr. Hinman.— The question used the word "shift." The witness testified his recollection was refreshed.

The President.— Avoid that. Why did you change?

Mr. Stanchfield.— If your Honor please, according to every lexicographer with which I am familiar, I thought the words "shift" and "change" were synonymous terms. I am perfectly willing to adopt the Senator's phraseology if he will come over and arrange my questions for me. I will put them in his language.

The President.— Why did you change?

The Witness.— Because I happened to remember I asked him shortly after Decoration Day.

Q. That is the only reason you can give for changing from the latter to the first part of June? A. That is the only reason.

Q. You read, I suppose, the New York papers, as well as French papers? A. I do.

Q. Read the New York dailies? A. Occasionally, not as a regular rule.

Q. And didn't you read on the 25th of June that the power of the Frawley Committee had been extended so as to enable them to inquire into the expenditure of campaign funds? A. I don't remember whether I read it, but I heard of it.

Q. You heard of it anyhow? A. Yes, I heard of it.

Q. And that occurred the latter part of June? A. Yes, sir.

Q. Of course that did not have anything to do with your changing the time from the latter part of June to the fore part? A. Absolutely nothing.

Q. When you had this first talk with Governor Sulzer about the place, did you ask him to make you pardon clerk? A. No, sir, I did not.

Q. Were you ambitious to be pardon clerk? A. Yes, I should have liked to be appointed to that place.

Q. Why? A. It would bring me in close touch with the Governor, and I would be in the office close to him and work there, and it would be legal work, and I would have enjoyed it.

Q. Any other reason? A. The only reason.

Q. You have heard there was money in that place, haven't you?

Mr. Hinman.— Objected to on the ground it is incompetent and improper.

Mr. Stanchfield.— I say it is perfectly proper cross-examination.

The President.— Objection sustained. You can ask him the question whether —

Q. You say one reason you wanted the place was because it embodied legal work, and you were fond of it? A. I was.

Q. You never were fond enough of legal work to try and pass the Bar examination? A. I never considered myself capable enough to pass the Bar examination.

Q. Precisely. You didn't think you were competent to pass it?

The President.— He said that.

Mr. Stanchfield.— That is true.

Q. You also gave as a reason that you thought or felt that the place of pardon clerk would put you in proximity to the Governor? A. Yes, sir.

Q. As confidential stenographer, weren't you in quite as close proximity as you would have been as pardon clerk? A. But I didn't know I was going to be appointed confidential stenographer.

Q. You were already occupying it, or had been for months, hadn't you? A. I had never uttered a wish to become pardon clerk after I had been appointed confidential stenographer.

Q. It was before that? A. It was before that. I had received no appointment at all from the Governor.

Q. To whom did you utter the wish to become pardon clerk?

Mr. Hinman.— Objected to on the ground it is immaterial and irrelevant.

The President.— Objection sustained.

Q. Can you fix the date for me when you had this conversation with Governor Sulzer about this? A. You mean about a place other than confidential stenographer?

Q. Yes. A. I cannot fix it any closer than shortly after Decoration Day.

Q. You cannot give me the day of the week nor the date? A. No.

Q. What did you say to him at that time? A. I told him that I was running into debt on $2,500 a year; I had two homes to keep up, one in Brooklyn and one here; I was not permitted traveling expenses, and if I went home for over Sunday it would be at my own expense, and I couldn't afford to hold the place at $2,500 a year; I was earning fully that much in New York City, and then — do you want me to tell you what he said?

Q. Well, I want you to go on with the conversation. A. Well, he said perhaps he will do a little better by me a little later on; that he was — that he had lots of trouble on his hand just then. I said I knew that, and that was one of the reasons I had not talked to him before; I didn't want to inflict my troubles on him. Then he said he would look around and see if there is any particular place he could get for me, and I told him that Mr. Hennessy had suggested to me a place in the Bureau of Deportation in New York City, and I asked the Governor whether he would consent to my being appointed to the place, or whether he would recommend me for appointment, and he said that he would take that up with me a little later. That was all the conversation we had.

Q. On that subject? A. On that subject.

Q. Then it was Mr. Hanify who had suggested to you this place? A. No, sir.

Mr. Hinman.— Mr. Hennessy.

Q. Hennessy? A. Mr. Hennessy.

Q. Pardon me. I understood you to say Hanify. Mr. Hennessy? A. Yes, sir.

Q. What position does Mr. Hennessy occupy?

Mr. Hinman.— (Interrupting) That is objected to on the ground that it is irrelevant and immaterial and improper.

Q. (Continuing) In the Sulzer administration?

The President.— Let him answer. Objection overruled.

The Witness.— At that time?

Q. Yes. A. I don't know — yes, I think he had been appointed confidential agent in the Highway Department.

Q. And was filling that place at that time? A. Yes, sir.

Q. Now, did you have any further talk with the Governor about that place? A. I don't think that I had another talk with the Governor about that place until the day I was appointed.

Q. Now, in your original conversation was there any allusion made by you as to the salary that that place carried? A. No, sir.

Q. Was there any discussion between you with reference to what the law imposed upon you in connection with the duties of that office? A. No, sir.

Q. Have you ever yourself read to find out what the duties were?

Mr. Hinman.— Objected to on the ground that it is —

Q. (Continuing) Of Deputy of the Deportation Department?

Mr. Hinman.— Objected to on the ground that it is incompetent, immaterial and irrelevant.

The President.— Objection sustained. How is that material?

Mr. Stanchfield.— I will state how it is material. The statute of the State prescribes in terms that an incumbent of that office shall devote his entire time and attention to the duties of that office, and I purpose to follow it up by asking the witness —

The President.— You can ask him then, you have got the statute, whether he did devote his entire time to it.

Mr. Stanchfield.— That is what I was endeavoring to do.

The President.— Well, you have got the statute and it shows for itself. We have got, of course, to take notice of the statutes of the State.

Q. I will ask you, Mr. Sarecky, whether or no you read section 19 of the Insanity Law applicable to the deportation of the insane?

Mr. Hinman.— Objected to on the ground that it is immaterial and irrelevant.

The President.— Objection overruled, Mr. Hinman.

The Witness.— I think I read it.

Q. I will read you from it this language? A. Yes, sir.

Q. (Reading) "Medical examiners and deputies shall devote their entire time to the performance of the duties hereby imposed upon them." Do you recollect reading that phraseology? A. I do.

Q. Now, in your conversation with the Governor did you discuss the fact that that would take all your time? A. I don't think that that subject came up.

Q. And that, in substance, you would be unable to do anything else? A. That subject didn't come up.

Q. Well, now, since the time when you were subpoenaed you have been devoting the great bulk of your time to stenographic work, haven't you? A. I don't think so.

Q. Well, a considerable portion of it? A. No, sir.

Q. Haven't you been away doing stenographic work since you were subpoenaed the 26th of July, with Mr. Hennessy in the Highway Department? A. Not for a great length of time, as you said; for a day, I think, at the most.

Q. You went to Buffalo in an automobile since this trial commenced, didn't you? A. I did not.

Q. Did you go to Buffalo with Mr. Hennessy? A. I did.

Q. Did you go there to perform stenographic work for him? A. I did.

Q. Well, what, if anything, have you been doing since the 26th

of July? A. I have been waiting in Albany for the Assembly or the Legislature to take some action.

Q. Did your waiting for them to take action interfere in any way with your reporting down to your duties in New York? A. I was specifically told by Senator Frawley that I was to remain in this town.

Q. All the time? A. All the time.

Q. So you have been staying here all the time? A. Pretty near all the time.

Mr. Hinman.— If you will refer to your record you will see that that is in the record.

Q. Now, where, outside of going to Buffalo, have you gone with Mr. Hennessy? A. I think I went up with him for over Sunday to Luzerne.

Q. Anywhere else? A. I don't remember just now.

Q. And with that exception you have remained in Albany? A. To the best of my recollections.

Q. You, week-ends, have gone home, haven't you? A. Over Sunday?

Q. Yes. A. Not always.

Q. Well, when you were inclined? A. When I was inclined I went home over Sundays.

Q. Now, did you talk over with Governor Sulzer the question as to whether you were or would be competent or whether in any way it would be possible for you to pass a civil service examination for this place — A. (Interrupting.) No, sir.

Q. (Continuing.) In the Bureau of Deportation? A. No, sir.

Q. You knew you couldn't pass it? A. I don't know whether a civil service — that place wasn't under civil service.

Q. Don't you know that there was a long correspondence between the Hospital Commission and the Civil Service Board to exempt you? A. I think —

Mr. Hinman.— Just a moment. That is objected to on the ground it is incompetent, irrelevant, immaterial and improper.

The President.— Objection overruled.

Q. To exempt you? A. I don't know; I think there was.

Q. Don't you know that an effort was made to induce the Civil Service Board to suspend the rule requiring you to be examined?

Mr. Hinman.— That is objected to.

The President.— The objection to that is sustained unless he took part in it.

Q. I say you do know that an effort was made to exempt you from examination.

Mr. Hinman.— If the Court please, it is objected to on the ground that it assumes facts not proven.

Q. The correspondence on the subject?

Mr. Hinman.— The correspondence speaks for itself, if your Honor please.

The President.— You have got the correspondence in evidence.

Q. That is right, isn't it? A. What is right?

Q. You knew there was correspondence upon that subject?

Mr. Hinman.— Just a moment. If the Court please, that is objected to upon the ground that the objection was sustained.

The President.— No, he has already answered that he knew there was a correspondence.

Q. And you as a matter of fact never did take any examination? A. No examination was ever necessary for the place.

Q. You never took any examination? A. No, sir.

The President.— Just answer the question, witness. Did you take any?

The Witness.— No, sir.

Q. Now, did you have any further talk with the Governor after you were subpoenaed? You have related one that you had before? A. No, I had no talk with him after I had been subpoenaed and before I appeared before the Frawley Committee except the one time that I stated.

Q. Didn't you tell him that you had been subpoenaed? A. I told him that —

Q. Did you tell him that you had been subpoenaed? A. No, I do not think I told him.

By the President:

Q. Had you been subpoenaed? A. I had been subpoenaed.

Q. Did you have a conversation with him after you were subpoenaed? A. I did.

By Mr. Stanchfield:

Q. Do you recollect testifying before the Frawley Committee? A. I do.

Q. Weren't you asked before that Committee, whether or no you saw the Governor after you were subpoenaed, and told him of the fact? A. I think I was, I don't remember.

Q. You told him that you had seen him, and you told him that you had been subpoenaed, didn't you? A. I don't remember what I said; if you have the record there, I could refresh my memory.

Q. Irrespective of records, your memory is pretty good, isn't it? A. On some subjects.

Q. What? A. On some subjects.

Q. Yes. Isn't it reasonably good on the subject as to whether you told Governor Sulzer that you had been subpoenaed before the Frawley Committee? A. No, I cannot say under oath whether I told him that I had been, or someone else told him.

Q. Is your memory bad on that particular subject, and good on others?

Mr. Hinman.— I object to the question on the ground it is improper in form.

By the President:

Q. What is your best recollection, witness? A. My best recollection, your Honor, is that I may have told him.

By Mr. Stanchfield:

Q. I will ask you whether you were not asked this question before the Frawley Committee, and I read from page 36 with

reference to the Governor: "Q. You came up on official business, and then incidentally you went in and spoke to him? A. I did." Did you swear to that? A. I did.

Q. "Q. Did you tell him about this subpoena? A. Yes." Did you swear to that? A. I did.

By the President:

Q. Witness, with your recollection being refreshed by the reading of that testimony, did you or did you not tell him? A. I did.

Q. You did talk to him about the subpoena? A. I did talk to him about the subpoena.

Q. Or he talked to you? A. Yes, sir.

By Mr. Stanchfield:

Q. Now, tell us what was said? A. Mr. Hennessy and I went into his office — I am going to lead up to the conversation —

Q. I am not asking you anything about Mr. Hennessy. I am asking you what was said between you and the Governor upon the subject of your having been subpoenaed before the Frawley Committee.

The President.— If Hennessy took part in that conversation, it seems to me it will be necessary to so state, otherwise it would be unintelligible.

By the President:

Q. Was Hennessy there? A. Yes, sir, he was in the room, the three of us talked over the matter.

Q. Did he take part in the talk? A. He did.

By Mr. Stanchfield:

Q. Go ahead? A. I went into the Executive Chamber, and then went into the Governor's private room.

Q. The Hennessy of whom you there speak was the same Hennessy who had suggested your appointment to the Bureau of Deportation? A. Yes, sir.

Q. Now, go ahead? A. And I do not remember the exact language that was used on the occasion, but in substance it was

to the effect that I was asked whether I was nervous or whether I was afraid of appearing before the Committee, and I said no, and that was about all that was talked about at that time, I think.

Q. Who asked you whether you were nervous about appearing before the Frawley Committee? A. The Governor did.

Q. Why should he — why should he be solicitous about your nervous condition?

Mr. Hinman.— That is objected to as —

The President.— Sustained. Tell what occurred.

Mr. Stanchfield.— That is what my question calls for.

The President.— Solicitous requires his judgment.

Mr. Stanchfield.— No, the inquiry was what the Governor said — the question was right.

Q. Did the Governor in the conversation with you say anything as to why he was nervous — why you should be nervous about going before the Frawley Committee? A. No.

Q. Nothing was said then upon the subject? A. He simply asked me smilingly —

Q. Other than what you have said? A. I don't remember what I have said since.

Q. Did you ask the Governor why he should have any solicitude upon that subject?

Mr. Hinman.— Objected to on the ground it is incompetent and improper in form.

Objection sustained.

Q. Did you, Mr. Sarecky, make any response whatever to that suggestion emanating from the Governor? A. I think I smiled and said no.

Q. And nothing more? A. To the best of my recollection.

Q. Is that all of the conversation? A. To the best of my recollection, that is all. I think it was about time to appear before the Committee, and we went out.

Q. That enables you then, to fix the day of this conversation?

A. I said it was the morning, I think, that I appeared before the Frawley Committee.

Q. That would be the 30th of July? A. About that.

Q. You told us what you say was all the conversation you had with the Governor at that time. Are you acquainted with Mr. Louis Marshall? A. I am.

Q. Was his name mentioned in that conversation? A. I don't remember whether it was mentioned on that occasion or on some other occasion.

Q. Had you already seen Mr. Louis Marshall? A. No, sir, I had not.

Q. I mean now, at the time of the conversation with the Governor, had you seen Mr. Louis Marshall? A. I had seen him before, yes.

Q. To talk with him about your having been subpoenaed? A. No, sir.

Q. You mean by having seen him before, you knew him? A. Yes, knew him by sight.

Q. Knew him by sight, only, is that right? A. Yes.

Q. He is the same Mr. Louis Marshall who has appeared here during this trial, as counsel for the Governor? A. Yes, sir.

Q. How did you come to see Louis Marshall that same day?

Mr. Hinman.— That is objected to on the ground that there is no evidence here that he saw him on that same day.

Objection sustained.

Q. Did you see Mr. Marshall on that day? A. I did not.

Q. When did you first see him?

The President.— You mean about this matter?

Q. Yes, to talk with him? A. That was after I had appeared before the Frawley Committee.

Q. Where did you see him? A. I saw him, I think, at Saranac Lake.

Q. At whose suggestion did you see him? A. I do not remember who suggested that to me.

Q. Did you go to Saranac Lake? A. Yes.

Q. Did you go there to see him? A. I did.

Q. Did you go there to consult with him professionally? A. I went there to discuss with him the Frawley Committee.

Q. And whether you could be compelled to appear and testify?

Mr. Hinman.— That is objected to.

The President.— Sustained. That is confidential between him and his counsel; he is not obliged to say.

Q. You say you saw Mr. Marshall at Saranac Lake? A. Yes, sir.

Q. Don't you know the Governor telegraphed him as to whether or no he would see you there? A. I don't know anything about that.

Q. Will you tell me now who suggested to you that you go there? A. I don't recollect who it was that suggested it to me.

Q. How did you know he was at Saranac Lake? A. I was told he was there.

Q. By whom? A. I don't remember whether it was the Governor or Mr. Hennessy.

The President.—Was it at this conversation or at one of the two?

The Witness.— No, it was not at this conversation at all.

Q. It was one or the other? A. It was one or the other.

Q. That told you to go to Saranac Lake and see Mr. Marshall? A. Yes, sir.

Q. On the 30th of July, that was the same day you had this talk with the Governor and Mr. Hennessy? A. I think it was, yes, sir.

Q. Wasn't that the very day on which you refused to answer?

Mr. Hinman.— Objected to on the ground it is incompetent, improper and assumes facts not proven.

Mr. Stanchfield.— That is a perfectly proper inquiry.

The President.— One moment. Was that the day — I think it is.

Mr. Stanchfield.— I am right.

The President.—You are right. It is in evidence, his refusal to answer.

Mr. Hinman.— If your Honor please, the refusal to answer, you will remember the statement that was made, that he would refuse to answer concerning certain things unless represented by counsel so both sides of the story could be told and the Chairman told him —

The President.—Yes.

Mr. Stanchfield.— The point is this.

The President.— One moment. I think it is in evidence what was said and that he said he would refuse unless he produced —

Q. You did refuse to answer on the 30th? A. Yes.
Q. And you testified you refused on the advice of counsel, didn't you? A. Yes, sir.
Q. And the counsel was Louis Marshall?

The President.— Objection sustained. Well there isn't any objection.

Mr. Hinman.— Well, we object to it. It is the same line of examination.

Mr. Stanchfield.— Will the Presiding Judge tell me just where I am in error there?

The President.— It is this. If a man goes to a lawyer he isn't bound to tell what the subject of the conversation was.

Mr. Stanchfield.— I don't think you got my inquiry. I asked him whether he refused to answer before the Frawley Committee upon the advice of counsel.

The President.— That is just what I say. That requires what advice his counsel gave him. He is not bound to tell that. It is a sacred confidence.

Mr. Stanchfield.— The question is whether he testified to that.

The President.— I do not think I will let you put that in. I will sustain the objection.

Q. I will read from page 36 the question before the Frawley Committee, and I want your attention, Mr. Sarecky:

> "Q. Did Mr. Hennessy advise you not to answer the subpoena?" And did you answer "He concurred in the opinion rendered by Mr. Marshall." Did you swear to that?

Mr. Hinman.— That is objected to.

The President.— He may ask that as far as a part of that is absolutely necessary and strike out the allusion to Marshall. It is very difficult to separate that.

Judge Werner.— Mr. President, it seems to me there may be some confusion about the form of this question. The inquiry as I understand it is not whether Mr. Marshall told this witness a certain thing but whether he stated in his examination before the Frawley Committee that he refused to answer under the advice of counsel. It seems to me that what he stated is entirely competent. I submit that with entire deference.

The President.— The Presiding Judge regrets to disagree with Judge Werner on that subject. What he said about Mr. Marshall is not relevant here. Whether he testified to that on a previous occasion or not would only be good for the purpose of calling his attention to it now so he might answer the question whether he did or not. In other words you get back to the same thing, as to what Mr. Marshall's advice was.

Mr. Stanchfield.— Will the Presiding Judge hear me for a second?

The President.— Yes.

Mr. Stanchfield.— In the situation between the witness and Mr. Marshall the witness was the client of Mr. Marshall. The client of Mr. Marshall upon the stand under oath has already testified that Mr. Marshall advised him not to answer certain questions before the Frawley Committee. Therefore the client has waived the right to invoke the privilege.

The President.— He has only waived it in my judgment for the occasion. He does not waive it absolutely when it comes up again. He waives it for that occasion.

Mr. Stanchfield.— My contention would be that once waived it is waived for all time and in all places and under all circumstances.

The President.— I think not, Mr. Stanchfield. Did you say Hennessy concurred in the opinion that you could not be compelled to testify?

The Witness.— I did.

Q. Doesn't that answer refresh your recollection that you had seen Mr. Marshall necessarily before you were on the stand?

Mr. Hinman.— Objected to on the ground it is incompetent and improper.

The President.— Objection sustained.

Q. Will you still say positively that you did not see Mr. Marshall before you went upon the stand at the investigation of the Frawley Committee?

Mr. Hinman.— That is objected to on the ground it is incompetent and improper and assumes facts not proven.

The President.— That may fix a date. That does not say what his advice was or anything of the kind.

Q. Will you say now that you had not seen Mr. Marshall before you were sworn as a witness on the 30th of July before the Frawley Committee? A. Not with reference to this matter, no.

Q. Had you seen him before that day to talk with him upon any subject?

Mr. Hinman.— Objected to on the ground it is immaterial and irrelevant.

The President.— Objection overruled. It is not disclosing.

The Witness.— I may have seen him. He was interested in —

Q. Never mind. Had you seen him to talk with him? A. I don't remember whether I had or not.

Q. Had you seen him, in other words, during the month of

July or June, 1913, to talk with him? A. I don't think I had during that month.

Q. Were you asked before the Frawley Committee this question — I read from page 36, and did you make this answer: "Q. Was Mr. Marshall the attorney who advised you." and did you answer "He was the attorney that advised me."

Mr. Hinman.— Objected to on the ground it is incompetent, improper and immaterial.

The President.— Objection overruled.

The Witness.— I did testify to that.

Q. Was that statement true? A. It was.

Q. When had you seen Mr. Marshall? A. I had —

Mr. Hinman.— That is objected to on the ground that it is incompetent and immaterial.

The President.— Overruled.

Mr. Hinman.— And going over what has already been gone over twice.

The President.— Overruled. As I understand, the witness has said he could not state whether it was before or after. This tends to fix whether it was or not.

Mr. Stanchfield.— He has stated unqualifiedly that he did not see Mr. Marshall until he saw him at Saranac Lake until after this date.

The President.— Now refresh your recollection with that testimony? Had you seen Mr. Marshall before?

The Witness.— I had not.

Q. Then the testimony you gave here was inaccurate? A. No, sir, it was not.

Q. Well, will you reconcile them? A. I will. Mr. Marshall had rendered an opinion on the subject and it was his advice I was following.

Q. The question was this: "Was Mr. Marshall the attorney who advised you." Your answer "He was the attorney that advised me." A. Yes, sir.

The President.— Counselor, now you can go into the whole subject. The witness tells what his advice was. If you want you can go into the whole subject.

Q. Did you see Mr. Marshall? A. I did not.

Q. And when you made this answer before the Frawley Committee that he was the counsel who advised you, did you mean that you were acting upon an opinion of his that you had read not intended for you? A. I do not think the opinion was rendered for anyone in particular. It was rendered to cover the situation. I was governed by that. That was what I intended to convey when I said I followed his advice.

Q. You said "He was the attorney who advised me." A. He was the attorney who had rendered that opinion.

Q. That is not what you said.

The President.— You must put interrogations to the witness.

Q. Your answer was, "he was the attorney that advised me," was it not? A. Well they were illy chosen words. That is all I can say. I meant to convey that I followed his advice.

Q. Wait a minute. I will take that answer, "They were illy chosen words." When did you see or first see Mr. Marshall's opinion? A. I don't think I ever saw his opinion.

Q. Do you know to whom he rendered an opinion? A. I think it was to the Governor.

Q. Who conveyed to you directly or indirectly the substance of that opinion if you never saw it? A. Mr. Hennessy did.

Q. And was that in the conversation that you had on the 30th in the presence of the Governor? A. No, no, I had seen Mr. Hennessy before I saw the Governor.

Q. Where? A. In Albany.

Q. And he was the one who gave you this information? A. He was.

Q. Were you asked this question, and I read from the top of page 35? "Who advised you to refuse to answer" and did you answer "my counsel"? A. I think I did answer that.

Q. Were you asked this question, "Who is your counsel" and did you answer "Mr. Louis Marshall"? A. I did.

Q. Were you asked this question, "Who recommended the counsel to you?" and did you answer "Nobody did"? A. I did say that.

Q. "You chose him yourself, did you" and did you answer "I did, yes, sir"? A. I did.

Q. And were you asked this question, "You chose him yourself, you say that absolutely nobody suggested any counsel to you? A. Well, his name was suggested to me as being a good counsel". Did you say that? A. I did.

Q. Now, in the light of that testimony do you still adhere to your answer that you had not seen and personally talked to Mr. Marshall before you went upon the witness stand upon that occasion? A. I do say that.

Mr. Marshall.— That is all on that subject.

Q. Was your attention in any way directed to the correspondence that took place between the State Hospital Commission and the Board of Civil Service? A. I don't think it was.

Q. While it is on my mind, or my attention is called to it, I want to go back with you for a moment to the witness Mr. Webb Floyd, who was here, the President of the Mutual Alliance Trust Company, and I will ask you these specific questions, to which I call your serious consideration: Did you call upon Mr. Floyd late in July and ask him whether or no the Mutual Alliance Trust Company or any of its employees or officers had been subpoenaed to attend before the Frawley Committee? A. I had called on him.

Q. Did you call on him and ask him that question? A. I did, I answered.

Q. And did you ask him not to obey that subpoena? A. I think I did ask him that.

Q. At whose instance did you go to the President of this New York Trust Company?

Mr. Hinman.— That is objected to on the ground it is incompetent and improper.

The President.— Objection sustained. He has not testified it was at any one's instance, and the question assumes that.

Q. Did you call on the President of the Trust Company and ask him not to obey the subpoena to attend before the Frawley Committee, on your own volition?

Mr. Hinman.— Objected to on the ground it is incompetent, not a proper subject of cross-examination, and they are making him their own witness and reopening the case.

The President.— Objection overruled. Did you do that of your own volition or did someone suggest it?

The Witness.— Someone suggested it to me.

Q. Who suggested it to you?

The President.— How is that material unless it was the respondent?

Mr. Stanchfield.— It may have been.

The President.— Then you ought to ask.

Q. Mr. Sarecky, will you tell me whether or no Mr. Sulzer suggested to you to go to see Mr. Floyd of the Mutual Alliance Trust Company? A. No, sir, he didn't.

Q. Was it Hennessy?

Mr. Hinman.— That is objected to on the ground it is incompetent, irrelevant, improper and immaterial.

The President.— Objection sustained.

Q. Was there any talk or conversation in the presence of Governor Sulzer upon the subject of the Mutual Alliance Trust Company having been subpoenaed before the Frawley Committee.

Mr. Hinman.— If the Court please, that is objected to on the ground it is incompetent, irrelevant and immaterial.

The President.— Overruled.

A. No, sir, not to my knowledge.

Q. Now, running back to the correspondence between the State Hospital Commission and the Civil Service Commission, I repeat my inquiry, did you see that correspondence?

Mr. Hinman.— That is objected to on the same grounds, if your Honor please.

The President.— Objection overruled.

A. No, sir, I did not.

Q. Did you ever go and talk with Mr. Hanify about it? A. I don't think I ever discussed that correspondence with Mr. Hanify.

Q. Did you ever discuss with Mr. Hanify the question as to whether or no you could withstand a civil service examination for that position?

Mr. Hinman.— Objected to on the ground —

A. (Interrupting.) No, sir.

Q. Did you know, when you were talking to the Governor about this place, what salary it returned? A. No, sir, I hadn't any positive knowledge at the time.

By the President:

Q. Well, you believed it was greater? A. Oh, yes, I thought it was $3,500 at the time.

Q. What? A. I really thought it only was $3,500 at the time.

Q. Greater than the one you were getting? A. Yes, sir.

By Mr. Stanchfield.

Q. Greater in fact by $1,500.

Mr. Hinman.— If the Court please, that is objected to on the ground that it calls for a conclusion.

The President.— Doesn't it show for itself that the difference between $2,500 and $4,000 is $1,500?

Mr. Stanchfield.—As a matter of mathematics, yes.

Q. Mr. Sarecky, Governor Sulzer has been in public office ever since you have been connected with his office, hasn't he? A. Yes, sir.

Q. You stated yesterday that you went there in 1902? A. Yes, sir.

Q. And from that time down until he became Governor he was a member of Congress? A. Yes, sir.

Q. Had he been filing, during any of that period of time, statements of his election receipts and expenditures? A. I think he has.

Q. Had you ever had anything to do before 1912 with the making up of such statements? A. I may have done the typewriting on it, but I never got them up myself.

Q. That may be your dull recollection? A. Yes.

Q. But that he had made such statements before, you do recollect? A. Yes.

Q. You wrote yesterday, and seemed to be willing to write, for the information of some members —

The President.— Don't comment; use the interrogation point.

Mr. Stanchfield.— I am getting ready to ask him; it was not an inquiry; I just want to find a pad.

Q. You wrote yesterday, at the request of a member of the Court, Governor Sulzer's name "Wm.?" A. "Wm."

Q. "Wm. Sulzer." Now, I would like to ask you whether you ever attempted to sign his name, writing out the William "W-i-l-l-i-a-m?" A. Not to my recollection; I don't think I ever did.

Q. Well, a request has been made. I will ask you — if you have any objection you need not do it — whether you would be willing to write three or four signatures, both "Wm." and "W-i-l-l-i-a-m."

Mr. Hinman.—We object to it — we haven't any objection to his writing "Wm. Sulzer."

Mr. Stanchfield.— I said to the witness, if he was disinclined to do it, he need not do it.

Mr. Hinman.— The witness hasn't said one way or the other. My objection is addressed to the Court.

The President.—What is the objection?

Mr. Hinman.— I object to the witness being asked to write the name "William" in full.

The President.— Objection overruled.

Mr. Hinman.— Have you got a pen and ink?

Mr. Herrick.— Have you got a stub pen?

Mr. Stanchfield.— I have a stub.

The Witness.— That isn't quite the pen I generally use.

Mr. Stanchfield.— They want "William."

Mr. Hinman.—Who does the gentleman refer to when he says "they want?"

Mr. Stanchfield.— I say some inquiry came up here; I don't know who it was.

Mr. Herrick.— Mr. Stanchfield, hadn't that better be marked for identification?

Mr. Stanchfield.— Yes.

Paper with names written on it marked Exhibit M-129 for identification.

Q. I was asking your attention for a moment at the time when you were interrupted, to write these signatures, to your connection with or familiarity with, if any, the making of these campaign statements; you recall? A. Yes.

Q. Now, in the fall of 1912, during the gubernatorial campaign, you told Senator Hinman yesterday in substance, that there was some sort of a committee appointed to look after matters of finance? A. Yes, sir.

Mr. Hinman.— Just a moment. That is objected to on the ground it assumes facts not proven. There is nothing in there that the Committee was appointed to look after the matter of finance.

The President.— Well, why is it worth while?

Q. What do you call that Committee?

The President.— I think he said it was to receive contributions.

Mr. Hinman.— He said it was a campaign Committee.

The President.— Yes.

Q. What do you call that Committee? A. A campaign Committee.

Q. Did it keep any books? A. No, sir, the only records were what I kept.

Q. Where are those? A. I threw them away.

Q. You say the only records were some that you personally kept? A. Yes, sir.

Q. Who composed that Committee? A. The Committee was composed of a number of the Governor's personal friends.

Q. Name them? A. I do not remember all of them. I will name as many as I can remember. There was Col. Bacon, Governor Spriggs, Samuel Bell Thomas, Mr. Hanify, Major Farro, Mr. Frankenstein was on it, and I think Dr. Serowitz, and Dr. Glicksman, but I do not remember accurately.

Q. When did they have their first meeting? A. An informal meeting was held a few days after the Governor was nominated.

Q. Who was at that meeting? A. I think Mr. Frankenstein and Col. Bacon, and may be Major Farro, and myself.

Q. And yourself? A. Yes, sir.

Q. That is, you recall three with some definiteness, and are uncertain as to Major Farro? A. Yes, I am uncertain as to Major Farro.

Q. Were minutes of that meeting taken down by you? A. No, sir.

Q. Was there any president elected? A. No, sir.

Q. Or chairman? A. Not at that meeting.

Q. No officers at all? A. No, sir.

Q. When was there a subsequent meeting; you say that one took place the second day or so after his nomination? A. Yes, sir.

Q. When was the next meeting? A. The week after that.

Q. Who was present at that meeting? A. The gentlemen I mentioned in the first answer.

Q. Were they all there? A. I am pretty sure they were.

Q. Have you got any minutes of that meeting? A. No, sir; no minutes were kept.

Q. Was a Dr. Broder a member of that Committee? A. He may have been, I don't know.

Q. In other words, there is not in existence any minutes of any meeting at all? A. No, sir.

Q. What there were you destroyed?

Mr. Hinman.— Just a moment. That is objected to as incompetent and improper. It assumes facts not proven. The witness has already testified no minutes were kept.

The President.— He said there were no minutes kept except such as he kept.

Q. Didn't you say, Mr. Witness, that you did —

The President.— Wait.

Mr. Hinman.— The witness has testified that as to minutes of the meetings no minutes were kept; he said he kept some record as to moneys received —

Mr. Stanchfield.— He did not say anything of the kind.

The President.— Do not interrupt him. My recollection is he said there was nothing kept except such as he kept. We will have the record read.

The stenographer thereupon read the following questions and answers:

"Q. Were minutes of that meeting taken down by you? A. No, sir. * * *

"Q. Have you got any minutes of that meeting? A. No, sir; no minutes were kept.

"Q. In other words, there is not in existence any minutes of that meeting at all? A. No, sir."

The President.— I evidently was mistaken.

By Mr. Stanchfield:

Q. That you threw those away, that was your language? A. Yes, sir; memorandums that I had.

Mr. Hinman.— If I may be permitted, in order that there may be no misapprehension, I would like to call your Honor's attention to the fact, as I recall it, that he said that no minutes were kept of the meeting.

Q. You said you took down some memoranda? A. Not of the meetings.

Q. Memoranda of what? A. Of receipts and disbursements.

Q. By that Committee or by you? A. By me, as treasurer for that Committee.

Q. Where is there any record that you were ever elected treasurer of any committee? A. I don't know, except that I was selected as treasurer of the committee, at a meeting that was held.

Q. Where is there any record of it? A. I do not believe there was ever any record.

Q. Who nominated you for treasurer? A. The only nomination that was made was for chairman, and then I was sort of unanimously selected as secretary and treasurer.

Q. Who nominated you for secretary and treasurer? A. Some member present at that meeting; I do not remember just who it was.

Q. Was Governor Spriggs there? A. No, he was not there at that meeting.

Q. He was not there until a few days before election, was he? A. He was not there until about a week or ten days before election, I think, may be two weeks, I don't remember just when.

Q. He had been most of the campaign in Guatemala, hadn't he? A. Yes.

Q. Did you keep yourself, during that campaign, a memoranda of receipts that you had? A. I kept a memorandum of all money that came in that I received, and all that was disbursed.

Q. When you say memoranda, you had a book, didn't you? A. I did.

Q. In which you put down, if I follow you correctly, items that you received from day to day, and items that you expended from day to day, is that right?

Mr. Hinman.— That is objected to on the ground that it assumes facts not proven.

Mr. Stanchfield.— I am asking him whether I am right.

The President.— Objection overruled.

A. I had a little memorandum book.

Q. In which you kept, as I am indicating, what you received, and what you paid out? A. I started to keep it in that book, yes.

By the President:

Q. Did you continue to keep it? A. No, sir, I did not.

By Mr. Stanchfield:

Q. You said originally that you did keep such a book? A. I say so still; that I started a book, a memorandum book, in which I entered on one side receipts, and on the other side disbursements.

Q. And did you enter on one side the name of people contributing? A. I did.

Q. And on the corresponding page the names of people to whom you paid out? A. Yes.

Q. Where is that book? A. I threw it away.

Q. What did you throw it away for? A. I had no further use for it.

Q. Is that the best answer you can give me? A. It is the truthful answer, that I had absolutely no use for it just before I came up to Albany, or probably the first part of January.

Q. Where did you throw it? A. In the waste basket.

Q. How big a book was it? A. It was a little memorandum book that would fit an ordinary pocket.

Q. Describe it in size? A. It was about 6 inches by 4 inches, had a yellow cover.

Q. And how many leaves in it? A. About 30, I guess, or 35, maybe 40; I don't know just how many leaves.

Q. On what date did you start to keep that book? A. A few days after the Governor was nominated.

Q. Now, did you talk with him about keeping it? A. No, sir.

Q. How long did you continue to keep it? A. I kept it I think for about two or three days, maybe a little longer.

Q. You say you did not throw it away until just before you came to Albany? A. By keeping it, I thought you meant entering up items in the book.

Q. You did not throw it away until just before you came to Albany? A. No, until maybe the first part of January, maybe the latter part of December. I cannot tell just when I threw it away.

Q. You kept in that book receipts, if I understand your testimony, and disbursements for how long? A. About two or three days at the utmost, I think.

Q. Now, after that, do you say that you kept no written memoranda of either receipts or expenditures? A. No, sir, I do not say that.

Q. Well, did you? A. I did.

Q. In what? A. I continued to keep the memorandums as I had originally begun, on a sort of daily memorandum sheet; then finally, I got that little book, and I started entering from my daily memorandums into that book; the work began to accumulate so fast I could not find time to transfer the accounts, and I fell behind considerably, and so I did not bother entering from those sheets into the book.

Q. But you did keep the sheets? A. I did.

Q. Did you keep those sheets up until the end of the campaign? A. Yes, sir.

Q. Every day? A. Every day.

Q. On those sheets, did you put down receipts and expenditures? A. I did.

Q. Where are those sheets? A. I threw them away with the book.

Q. So that you have thrown away, as you say, every written evidence of moneys that you received, and moneys that you paid out in connection with this campaign? A. To the best of my recollection, I think I did.

Q. The only remaining evidence then, as to the contributions to the Governor during this campaign are contained in the bound volumes of which you spoke yesterday, over at the Executive Mansion? A. Well, I cannot say as to that.

Q. The only evidence of which you know, at any rate? A. The only evidence of which I know.

Q. Now, in connection with the keeping of these receipts and expenditures, you necessarily had a check book, didn't you? A. I did.

Q. Did you have an account at any other financial institution other than in the Mutual Alliance Trust Company? A. No, sir.

Q. Did you have any over in New Jersey? A. No, sir.

Q. You had no account anywhere, except in that one institution? A. That is the only institution I had an account.

Q. Did you have a check book on the Mutual Alliance Company? A. Yes, sir.

Q. A check book that you obtained for use during the campaign? A. Yes, sir.

Q. How large a check book was that? A. It was a large desk check book.

Q. How many check blanks upon the page? A. I think three.

Q. And stubs there, which you tore the checks off as you used them? A. Yes, sir.

Q. Where is that check book? A. I threw that away, too.

Q. Did you ever go over to the Mutual Alliance Trust Company to get the checks or vouchers that you used? A. I think either I went, or sent someone the latter part of October.

Q. Well, in any event, you got them, whether you sent or whether you went? A. Yes, sir, I got them.

Q. What did you do with those checks? A. I threw them away, too.

Q. Now, what reason will you give us now for the destruction of all of the evidence, both by entries in regard to checks and the check books connected with this campaign? A. The simple reason that I had absolutely no further use for them. I was cleaning up my desk preparatory to coming up to Albany, and one of the boys in the office was to use that desk and so I cleaned it out of all superfluous stuff that was in there that we had no further use for.

Q. Well, Mr. Sarecky, while you are not a lawyer, you have read, I assume, either in the law books or else in the newspapers, the various laws controlling the reception and distribution of campaign contributions, haven't you? A. I am generally familiar with it.

Q. You are generally familiar with it? A. Generally.

Q. And you knew that the receipt of money and the disbursement of money during the past three or four or five years has been very carefully guarded by law?

Mr. Hinman.— That is objected to, if the Court please, as incompetent and improper. The form of the question I object to as improper and calling for a conclusion.

Mr. Stanchfield.— Do you object to carefully guarded by law?

The President.— Well, you knew that there were legal regulations on that subject?

The Witness.— I had a general idea on the subject.

The President.— Generally?

The Witness.— Generally.

Q. You knew generally that these statutes very carefully guarded that matter? A. No, I said I knew generally about the entire subject.

The President.— That there were statutory regulations on the subject?

The Witness.— Yes, sir.

Q. Now, when you made up this statement with reference to which you have testified, you had those memoranda before you? A. Yes, sir, I had.

Q. You had your check book? A. No, I don't think I had my check book.

Q. Had you then destroyed it? A. No, sir.

Q. Now, when you say you threw it away, do you mean that you took a big check book such as you have described, three checks to the page, and chucked it into an ordinary office waste basket? A. I certainly did; I broke it in half and threw it away.

Q. Oh, you broke it in half? A. Yes.

Q. Now, if you thought these checks were of no consequence to you and you threw them away, why did you take the trouble to send to the Trust Company to get them? A. To help me make up my statement.

Q. Did you use them for that purpose? A. Such as I could use, surely.

Q. Now, did you yourself make up these deposit slips by which you put money in the Mutual Alliance Trust Company?

The President.— Haven't you been over that?

Mr. Stanchfield.— Not at all, I haven't touched it.

The President.— Very good then.

The Witness.— What was the question, Mr. Stanchfield?

Q. I asked you whether or no you made up the deposit slips for the Mutual Alliance Trust Company during the campaign, or any of them? A. I made up some of them.

Q. Did you direct the making up of all of them? A. Well, I don't know as I remember them; I was always there when they were made up.

Q. You were the one who received the Governor's mail? A. Yes, sir.

Q. Wasn't it your custom, during that campaign, to open the Governor's mail? A. With the assistance of those in the office; we all opened the mail.

Q. And didn't you take out from such letters as contained them, checks and pin them to the letter? A. Either we did that or the checks were put aside. I don't remember just how the thing was done.

Q. And were taken out and placed upon the Governor's desk? A. No, sir, they were placed on my desk.

Q. On your desk in your office? A. Yes, sir.

Q. Didn't you show them to him? A. He wasn't there —

Q. (Interrupting.) When he was there? A. No, I don't think I even did that.

Q. Not even when he was there? A. Not even when he was there.

Q. Now, that was the disposition that you made of such checks as you deposited in the Mutual Alliance Trust Company? A. Yes, sir.

Q. Did you talk with Governor Sulzer from time to time or at any time with reference to contributions that you had received in that way? A. Occasionally he would hand me a check and then that was the subject of discussion.

Q. That particular check that he handed you? A. Yes, that particular check.

Q. But the checks that you deposited in the Mutual Alliance, did you talk those over with him? A. No, sir.

Q. Never? A. I don't think I did.

The President.— Didn't you ever tell him who, that some amount or friend, how much he had contributed, or that he had made a contribution?

The Witness.— No, sir, I did not.

Q. Now, can you specify any check that he received and handed you that you talked over with him? A. I remember that Pinkney, that was discussed.

Q. That is the $200 check? A. That is the $200 check.

Q. And can you name another one? (No answer.)

Q. Can you name another one? A. I can't name any right off, unless my recollection is —

Q. (Interrupting) You have named all that you can recall at the moment? A. At the moment.

Q. That is, Mr. Pinkney? A. Yes, sir.

Q. And that, you say, the Governor handed you? A. Yes, sir.

Q. And that is the reason you recollect some conversation about it? A. I recollect that particular talk because Mr. Pinkney was here —

Q. (Interrupting) You needn't go at all over that again. We heard that once and we will take care of that later. A. Yes, sir.

Q. Did he ever hand you any other checks than the Pinkney check? A. He did.

Q. What? A. I can't recollect just what the checks —

Q. (Interrupting) Name one. A. I can't think of any for the moment.

Q. Did he ever hand you any cash? A. I think he did.

Q. How much? A. Well, it wasn't over $500; it may have been a little more.

Q. When? A. Sometime during the campaign. I can't specify any particular day.

Q. And whose contribution was that? A. I don't remember now the name.

Q. That is the only instance of cash that you can recall? A. That is the only one I can recall.

Q. Did he ever at any time or place, tell you of any other contributions than the Pinkney check of $200 and the item of $500 in cash? A. No, sir, he did not.

Q. So that you had no knowledge, no information from Governor Sulzer of any other receipts by him of money other than those two? A. There may have been one or two more, but not of large amounts.

Q. Well, I am very particular about this. If there were one or two more, you name them? A. I can't recollect just now who —

Q. (Interrupting.) You can't say that there was even another instance, can you? A. I think there was.

Q. Well, what was it? A. I can't recollect.

Q. Well, if you think there was another one, you must have some notion about it.

Mr. Hinman.— If the Court please —

The President.—Answer the question.

A. I can't recollect who it was that gave the check.

Mr. Hinman.— If the Court please, we object —

The Witness.— I can't recollect whose check it was.

Q. Haven't you in your mind any shadowy notion of the identity of the person? A. I have, and I am trying to think of it.

Q. When you say you think there was one other person, why can't you give me a notion of who you had in mind?

Mr. Hinman.— I object on the ground that it is incompetent, immaterial, improper and irrelevant, and it assumes facts not proven. The witness has testified that he thought there were one or two others.

The President.— He said he had some shadowy notions. He said he is trying to think about it. Just give him a chance.

By the President:

Q. Now, think and see if you can recall the person or occasion or occurrence. A. That is pretty hard to think.

Q. Think and see if you can recall? A. I can't place the name of the man whose check the Governor gave me.

Q. Do you recollect if there was such an occurrence? A. Yes, I am positive of that, but I can't recollect who it was.

By Mr. Stanchfield:

Q. Now, if you can't give me the name, give me the amount? A. It wasn't a large amount; it was $100 or $200, maybe $250.

The President.— That is all you can say of it?

The Witness.— That is about all I can say of it.

Q. So we may rest then with your testimony to the effect that Governor Sulzer never informed you in any way of any other one than the two occurrences, the Pinkney check and the $200 in cash and possibly this $100?

Mr. Hinman.— That is objected to on the ground that it is not a question, and the counsel may rest wherever he sees fit.

The President.— Change the form of the question.

Q. Then, to recapitulate your evidence, you have said that the Governor handed you —

Mr. Hinman.— If the Court please —

Mr. Stanchfield.— I insist that the —

The President.— I think that he may do that as a preliminary to it as long as he states what has been said.

Mr. Stanchfield.— It does not inquire —

The President.— You may proceed, Mr. Stanchfield.

Q. Is it a fact that Governor Sulzer handed you the Pinkney check for $200? A. He did.

Q. Is it the fact that he handed you a contribution in cash of $500? A. It may not have been a single contribution; it may have been from several people, but the amount I got was about $500.

Q. It is a fact then, that he gave you during the campaign

about $500 in cash as a contribution that had been made? A. As near as I can recollect.

Q. And it is a fact that you have in mind another item of somewhere in the neighborhood of $100?

Mr. Hinman.— Now, if the Court please, that is objected to.

The President.— What was the amount?

The Witness.— I said I don't know just the amount; it may be a hundred, two hundred or two hundred and fifty.

Q. In the neighborhood of two hundred or two hundred and fifty? A. Yes, sir.

Q. That is all? A. That is as much as I can recollect just now.

By the President:

Q. Now, are you positive that there were no more than those three, the two as to which you have specifically testified and the one which you say you have a vague or shadowy recollection about? A. Well, I can't say under oath whether that was all or whether that was not all.

Q. Now, to the best of your memory is that all? A. To the best of my memory that was all.

By Mr. Stanchfield:

Q. Now, have you in mind any other amount, either in check or in cash? A. What do you mean?

Q. That he gave you? A. That he gave me?

Q. Yes. A. No, sir, I haven't got any.

Q. Now, you say that you prepared the statement that was signed by the Governor? A. Yes, I did.

Q. You did yourself the typewriting work of the list of contributors that are attached to it? A. I did.

Q. Just what do you say you said to the Governor at the time when he signed it? A. I presented the statement to him and showed him where he was to sign it, and said, "This is the statement, Governor." Then he said, "Is it all right?" And I an-

swered, " This is as accurate as I can get it up," or words to that effect.

Q. Now, when you said that is as accurate as I can get it up, you meant that it was as accurate as you could make it predicated upon the information and the knowledge that you possessed as to the moneys he had received? A. Yes, sir.

Q. Did you keep a copy of the deposit slips in the Mutual Alliance? A. No, sir, I did not.

Q. Did you have, at the date when you made up this Exhibit 33 —

Mr. Hinman.— (Interrupting.) No, three.

Mr. Stanchfield.— Exhibit 3.

Q. Did you have, at the date when you made up this Exhibit 3, copies of the deposit slips in your possession? A. No, sir, I don't think I had.

Q. Did you have the slips themselves, the originals? A. The original deposit slips.

Q. Yes? A. No, sir.

Q. Do you know as a matter of fact that the names of the contributors upon this exhibit follow practically the order of the depositories upon the deposit slips? A. No, I don't know that.

Q. You are not acquainted with that fact? A. No, I am not acquainted with that fact.

Q. What memoranda did you have before you when you made up the statement? A. Those daily memorandum sheets.

Q. That you threw in the waste basket? A. Yes, sir.

Q. Anything else? A. (No answer.)

Q. Anything else? A. I am trying to think.

Q. Pardon me. A. I think I had my check book before me too.

Q. You needed your check book in order to prepare your statement — A. (Interrupting.) I am not sure whether I had it at that time; it may have been on the desk; I don't know whether I used it or not. I am trying to tell you what there was before me. That little book that I told you about before.

Q. Now, in making up a statement of expenditures you needed your check book, didn't you? A. No, sir, I had the receipted bills.

Q. That is what I am coming to. Did you have presented to you bills for payment? A. Yes, sir.

Q. Where are those bills? A. If I am not mistaken, I threw those away too.

Q. Did you, during the progress of the campaign, Mr. Sarecky, ever have any talk with the Governor on the subject of leaving out from this statement certain names? A. No, sir, I did not.

Q. Have you read in the newspapers, from year to year, in connection with the Governor, political discussion?

Mr. Hinman.— That is objected to on the ground it is incompetent, improper and immaterial.

The President.— It is introductory, you may ask it.

The Witness.— What was the question?

Q. Have you read from time to time in the newspapers, the press, political discussions, of the topics of the time? A. I have.

Q. You know from your reading, do you not, that there is quite a considerable temperance element in the State of New York?

Mr. Hinman.— Objected to on the ground it is incompetent, improper, immaterial, irrelevant and hearsay.

Mr. Stanchfield.— I think it is very competent.

The President.— You mean did he not know?

Q. Did you not know during the Governor's campaign in the fall of 1912, that there was quite a considerable prohibition vote in the State of New York? A. I did not.

Mr. Hinman.— Objected to on the same grounds.

The President.— Objection overruled.

The Witness.— I did not.

Q. You say you did not? A. No, sir. The subject did not interest me.

Q. You are not at all interested in politics? A. Not very much.

Mr. Hinman.— If your Honor please, the question answered does not relate to politics. He is talking about prohibition.

Mr. Stanchfield.— That may interest others, if it does not you.

Mr. Hinman.—Very likely, not you or me very much.

Q. You made out in writing, so you told me, a daily account for a period in a book of receipts, and afterwards on slips? A. Yes, sir.

Q. You meant to keep those with accuracy? A. I tried to keep them as accurately as I could.

Q. I hand you Exhibit 3, being the statement of the Governor, involved in this controversy, which you say you prepared? A. Yes, sir.

Q. I call your attention to October 14th. What is that name? A. Thomas Willis.

Q. What is the next one? A. Nathan H. Levi.

Q. And the next one? A. Hugo Haupt.

Q. And the next one? A. Nelson Smith.

Q. And the next one? A. J. W. Armstrong.

Q. And the next one? A. A. F. Schaeffer.

Q. And the next one? A. James F. Hurley.

Q. The next one? A. George W. Nevile.

Q. Yes? A. David Gerber.

Q. Yes? A. William F. Carroll.

Q. Yes? A. Willis P. Dowd.

Q. Yes? A. Macgrane Coxe.

Q. Yes? A. Mr. Bauman.

Q. Now you may stop.

The President.— That is complete, that date?

Mr. Stanchfield.— That is all that date.

The President.— That is all that date?

The Witness.— There are various dates.

Mr. Stanchfield.— That completes all I want.

Mr. Hinman.— If your Honor please,—

Mr. Stanchfield.— You can take it on direct, if you want to.

Mr. Hinman.— The question is in this shape now. He has asked him to read those of October 14th, and on the record it will show those are all October 14th.

Mr. Stanchfield.— I said nothing of the kind. I asked him to read October 14th, such names as I desired.

The President.— I will let it go. Proceed.

Q. I hand you one of your deposit slips in the Mutual Alliance? A. Yes, sir.

Q. You notice that? A. Yes, sir; I do.

Q. Read all the names in the order, so that we can all hear, upon that deposit slip of checks you put in? A. I cannot make out the first name on there in lead pencil. You see it. May be you can help me.

Mr. Kresel.— Peter Doelger.

The Witness.— Peter Doelger, $200 —

Q. Now, just a moment. Peter Doelger is one of the big brewers in New York, isn't he? A. I do not know whether he is or not. I think he is.

Q. Look on that statement you prepared, and find me Peter Doelger's name? A. I do not see it on here.

Q. How did the name of Peter Doelger, the brewer, happen to be omitted from your statement? A. I suppose it was accidental when I made up my —

Q. That answers it.

Mr. Herrick.— He hasn't completed his answer.

The President.— He has answered. It may be by reason of an accident. Such as it is he is entitled to give it.

The Witness.— When I made up my statement, I didn't have all the sheets before me. I thought I had all. Some of them were missing, and I could not account for every one of the items that went into my bank account.

Q. You are quite sure that is the correct explanation? A. That is the only explanation which accounts for my having omitted it.

Q. You must have had your slip, because all the rest of the names appear there, don't they? A. They are not all of the same date.

Q. You must have a sheet for all of them? A. They are not all of the same date.

Mr. Hinman.— I object to the form of the question.

The President.— If you put it in the interrogative we will stop these objections. Mustn't you have had those sheets before you?

Mr. Herrick.— No, the slip he inquires about.

Q. The sheets from which you made up the slip, didn't you have that before you? A. The slip was made up probably from several sheets. The names I called off to you are different dates. They are not all of one date.

Q. Run down that list on your deposit slip and read the names?

The President.— Do you want him to read them aloud. Let him look over and find these. Won't that be sufficient?

Mr. Stanchfield.— He says that is not on his list, Peter Doelger.

The President.— Then you have got that one.

Mr. Stanchfield.— Well, I am going after some more now.

The Witness.— Do you want the rest of the names?

Q. I want you to read on the deposit slip.

The President.— I think you mean on the statement.

Mr. Stanchfield.— On the deposit slip.

The Witness.— Hugh Haupt, J. E. Gander & Company, Nelson Smith, John Armstrong, Morris Tekulsky.

Q. Wait a minute. Morris Tekulsky. Did you hear the testimony here that he was the president of the Liquor Dealers' Association?

Mr. Hinman.— Objected to on the ground it is incompetent, improper, and the evidence he gave is that he was not at that time and had not been for a long time president.

Mr. Stanchfield.— But had been?

Mr. Hinman.— Years before.

Mr. Stanchfield.— Never mind when.

The President.— Change your question. Wasn't it at that time that he had been?

Q. He had been? A. I was not present when he testified.

Q. You see his name on the deposit slip? A. I do.

Q. Turn to that statement and find me Mr. Morris Tekulsky's name? A. No, his name isn't on.

Q. Isn't there, is it? A. No, sir.

Q. Why isn't that name there? A. I do not know. It was not put on.

Q. And still you say that there never was any conference between you and the Governor upon the propriety of omitting those names? A. I do.

Mr. Stanchfield.— I assume the members of the Court have photographic copies of these deposit slips somewhere in their records.

Q. I call your attention to a deposit slip under date of October 24th. What is the name on the first depository that occurs upon that slip? A. S. Uhlman.

Q. What is the amount of his contribution? A. Three hundred dollars.

Q. He is a brewer, isn't he? A. I do not know what he is.

Q. Well, find his deposit on your statement? A. It is not on.

Q. Can you tell us why that one was omitted? A. For the same reason, I suppose, as those were.

Q. Well, every day when you made up a list of your deposits you had before you the sheets or the book in which you kept an entry of receipts, did you?

Mr. Hinman.— If the Court please, I do not think that the witness has testified yet that he made up all those deposit slips, and I therefore object to the question on the ground —

The President.— I do not think you mean that, do you?

Q. I understood you to say, Mr. Sarecky, that if you didn't make them all up in person, you supervised or were present when they were made up? A. I was in the room when they were made up.

Q. So that when the deposit was made up to be sent over to the trust company you had before you necessarily, did you not, either the sheets or the book in order to make it up, show it?

Mr. Hinman.— That is objected to on the ground that the witness —

Mr. Stanchfield.—Will you give me at least the courtesy of completing a question before you interpose a question?

The President.— One moment.

Q. When you made up the list for deposit in the trust company, did you not have before you either the book or the sheets, with reference to which you have testified?

Mr. Hinman.— Now, that is objected to upon the ground it assumes this witness made up the deposit slips.

The President.— No, he is asking a question.

Mr. Hinman.— It assumes this witness has testified he had those before him in making up the slips.

The President.— I think the whole of it is interrogatory. Objection overruled.

Q. Whoever made the deposits generally had the slips and checks, and deposit slip before them, in order to make it up? A. Yes.

Q. And you can give no other reason than the one you have already given for the omission of that item? A. That is the only reason.

Q. Of $300? A. That is the only reason.

Q. I call your attention to the deposit slip of October 30, 1912. Was that made out by you? A. Yes, sir, that is my writing.

Q. There is no mistake about that, that you made that? A. The only writing on here that is mine is my name on top and the figures.

Q. I mean you made out the deposit slips? A. Yes, sir, but I didn't put all the writing on here.

Q. The names of the depositories, that is, the names of the parties signing the checks, were put on at the trust company by one of its clerks? A. I assume so.

Q. But that particular slip you have in your hand you made out, other than that? A. I did.

The President.— The amounts that are put on there?

The Witness.— Yes.

The President.—And then it was added up, I suppose, at the end?

The Witness.— Yes, sir.

The President.— That you did to show what your deposit was?

The Witness.— Yes, sir.

Q. On that deposit slip appears, does there not, a contribution of $100 from Bird S. Coler? A. It does.

Q. Find that on your statement? A. I don't see it on here.

Q. You don't find it there? A. No, sir.

Q. Mr. Bird S. Coler had been, by some other people, once a candidate for Governor of New York, hadn't he? A. I think he was, yes, sir.

Q. You know enough about practical politics to recollect that? A. I recollect he was a candidate for Governor?

Q. How did you happen to leave his name off that list? A. Why —

Q. When you made out that deposit slip you knew of Mr. Coler. Why did you omit his name from the statement? A. His name might have appeared on one of those slips which I did not have before me when I made up this statement here, which I have in my hand, his name might not have appeared on one of the slips.

Q. Slips — sheets, do you mean? A. Sheets, I mean. I did not mean deposit slips. I meant on the daily sheet.

Q. You mean you didn't keep the sheet correctly? A. No, sir, I did not say that. I say some of those sheets were missing.

Q. How did it get onto the slip, if you didn't have the sheet? A. It did get on the sheet, but that sheet was missing.

Q. When you took over the books, you went over the check of Mr. Coler, didn't you? A. I did.

The President.— I think that is explained. He says that sheet may have been missing. Is that the only excuse you can give?

The Witness.— That is the only excuse I can give for omitting it from this statement.

Q. There are other names on your sheet that appeared upon these sheets, on the very same sheet, aren't there? A. That does not necessarily follow, that the names appearing on this deposit slip appeared on my sheet.

The President.— No, but he doesn't ask you that.

The Witness.— I don't know what he is asking me.

The President.— Just repeat the question.

The stenographer read the question as follows:

"There are other names on your sheet that appeared upon these sheets, on the very same sheet, aren't there?"

The President.— Now answer.

The Witness.— There are names appearing on these deposit slips which appear in this statement, I think. I haven't examined them, but I think they do.

Q. Yes, no doubt about it? A. Yes.

Q. Also names on that slip that don't appear on your statement? A. Yes, sir.

Q. What I want to know is how could you make up that list and not have the names from this sheet from which you made it? A. I am trying to tell you.

Q. That is what I am trying to get. A. When checks were received from the office, I would make a memorandum on my daily sheet of the checks I received, and then deposit slips would be made out from those checks, and deposited.

The President.— You have made a mistake. The point is this: He wants to know why shouldn't all of them be there or none. That is the point.

The Witness.— It may have appeared on different sheets.

Mr. Hinman.— Did you get the answer of the witness?

The President.— Yes, he says they may have appeared on different sheets.

Senator Blauvelt.— I would like to call your attention to pages 546 and 547 of the printed record, which contain the exhibit now before the witness. On the printed record there appear to be no contributions made in the month of October. I think the printed record must be inaccurate. I am following those names and dates, and I would like to know whether the original statement of these expenses contains the correct dates of these contributions, or whether they were in September, as shown on the printed record?

The President.— The explanation, counsel calls attention to the fact that this is all in September and not October. If there is a mistake, the mistake exists in the copy, and not in the printed record.

Mr. Kresel.— Exists in the original.

The President.— I mean exists in the original, and not in the record. He suggests it is probably a mistake, but not in the record. The fault is not with our record, but in the original statement.

Mr. Richards.— They are simply ditto marks carrying it from September to October. That is the way it appears.

The Witness.— That really should be October 2d, because I didn't jump from September 23d to September 22d.

Q. Now, Mr. Sarecky, on the statement that you hold in your hand under certain dates appear certain names of contributors? A. Yes, sir.

Q. Two, three or more in number? A. Yes, sir.

Q. On your deposit slips under the same dates appear names that do not appear on your statement, isn't that so? A. Yes, sir.

Q. That being true you must have had before you when you made up your deposit slip the list of all those names, didn't you?

Mr. Hinman.— That is objected to on the ground —

The President.— Make it interrogative in form.

Q. In other words, when you made up your statement on which you put the names of these contributors — A. Yes, sir.

Q. — of that date, you had before you all the checks? A. I did.

Q. Now, when you sent over to the bank a list of deposits those deposits were made up from the sheet upon which you had put down the contributors? A. No, sir.

Mr. Hinman.— That is objected to upon the ground the witness had already answered his deposit slips were made up from the checks themselves and this assumes an entirely different state of facts.

By the President:

Q. As I understand the names of the drawers of the check that were deposited did not appear on the original slips when they left the office, but all the others were, but the names of the deposited checks were put on at the bank or trust company: is that correct? A. I did not quite catch the first part of your Honor's question.

Q. The deposit slips were filled out in the office as far as the dates and amounts of the several checks —

Mr. Hinman.— From the checks themselves.

The President.— Yes, and then the names of the particular persons whose checks they were, the drawers as we say in law of the checks was put on by the bank?

The Witness.— By the bank officials.

The President.— That is what I understood him to say.

Mr. Hinman.—The witness has testified that is so so far as he knows.

The President.— Of course so far as he knows. I think that was testified to by another witness heretofore here, either the President of the Trust Company or someone else.

By Mr. Stanchfield:

Q. Let me go back for a moment, Mr. Sarecky, to see if we can get this any clearer; on that statement does not appear the name of Peter Doelger? A. Yes, sir.

Q. The name of Peter Doelger does appear upon the deposit slip? A. Yes, sir.

Q. On October 19th? A. Yes, sir.

Q. And there are other names that appear upon that statement that appear upon the deposit slip? A. Yes, sir.

Q. Of October 19th? A. Yes, sir.

Q. Now, unless you had on your statement or the check before you or from some source Doelger's contribution, how does it get on the deposit slip? A. If you will permit me I will explain. When we received checks at the office I made a memorandum on these sheets as I call them sheets. A deposit slip was made out from these checks too. We did not receive all the checks at the same time; some checks we would receive in the morning, some checks the following morning, or some checks too late for deposit, and then the deposit slip would be made up from that batch of checks, but one check might be on one day's sheet and another check appear on the following day's sheet.

Q. But they all appear on the deposit slip under the same day? A. Yes; when we received checks after banking hours I necessarily had to keep them until the following day, but the receipt would be marked on that day, on that day's sheet.

Mr. Stanchfield.— Very well.

Senator Brown.— I would like, Mr. President, to have the dates of the checks that did not appear.

The President.— I think we have got that in the record.

Senator Brown.— The dates of the checks that did not appear?

The President.— That is the omitted — what we will call the omitted checks?

Senator Brown.— Yes, sir.

The President.— Just give them to the Senator. They are in

the record before; when the examination is concluded the Court will direct the counsel to give them to you.

By Mr. Stanchfield:

Q. I call your attention to a deposit slip under date of November 4, and ask you whether or no there appears on that deposit slip a deposit from Thomas E. Rush? A. Yes, sir.

Q. For how much? A. $500.

Q. Mr. Rush during the fall of 1912, was one of the Tammany District leaders, wasn't he? A. He was.

Q. Will you find me on your statement the contribution from Mr. Rush? A. (Witness examines statement.) It is not on here.

Q. It is not there? A. No, sir.

Q. Is there any explanation other than the one you have already made as to why it is not there? A. No, that is the only explanation.

Q. You received likewise during that campaign payable to your order a check, did you not, from Mr. Jacob H. Schiff, for $2,500? A. I did.

Q. From whom did you get the physical custody of that check? A. From a messenger from Mr. Schiff's office.

Q. Was it in an envelope? A. It was.

Q. And that check was payable to your order? A. It was.

Q. I hand you a deposit slip under the date of October 15th? A. Yes, sir.

Q. You have it before you? A. I have.

Q. That deposit slip shows, does it not, the deposit on that date of $2,500? A. It does.

Q. Was that the Schiff check? A. I think that is the check this refers to.

Q. You do not know of any other $2,500 contribution that you had? A. No, sir; I do not.

Q. Will you find me on your statement of campaign receipts the check of Mr. Schiff? A. It is not on here.

Q. Now, that deposit slip was made out by you? A. It was.

Q. And the figures upon it? A. Yes, sir.

Q. And the $2,500 was far and away the largest contribution that came into your possession during that campaign? A. Yes, sir.

Q. Now, you knew in a general way that Mr. Schiff would be classed in political circles as representing Wall street and the interests?

Mr. Hinman.— Objected to as incompetent, improper, immaterial and irrelevant.

The President.— I think he can answer; this all goes to the credibility of this statement. A. What is the question?

Mr. Stanchfield.— Will you repeat the question?

The stenographer thereupon repeated the question as follows:

"Q. You knew in a general way that Mr. Schiff would be classed in political circles as representing Wall street and the interests?" A. Well, I think he would be classed —

The President.— It is not what you think now; he want's to know at that time didn't you know that or regard it so —

The Witness.— No; I regarded him more as a philanthropist.

Q. Did you regard Mr. Morgan —

Mr. Hinman.— That is objected to on the ground that it is immaterial and irrelevant.

Q. Whether a philanthropist or a financier?

Mr. Hinman.— That is objected to as incompetent, irrelevant and immaterial.

The President.— Objection sustained

Q. Mr. Sarecky, do you mean to say seriously, living in New York and coming up in New York, that you look upon Mr. Schiff as a philanthropist and not as a financier? A. I look upon him as both.

Q. Very well. You knew of his firm of Kuhn, Loeb & Company? A. I knew of them.

Q. And as a matter of political or financial history, you knew for years they have been connected with about every big undertaking in this country, didn't you? A. I did.

Q. Will you tell us why from that statement you omitted the

largest contribution that you had, $2,500? A. I cannot think of a single reason why I omitted it.

Q. Did you have any conversation at all with Governor Sulzer upon the subject of the inclusion or omission of that deposit from the statement? A. I testified before —

Q. Just answer the question.

The President.— Yes. Answer.

A. No, sir, I did not.

Q. Did you receive the Schiff check at Mr. Schiff's office or at your office? A. At my office, if I remember correctly.

Q. Did you go over to Mr. Schiff's office with Mr. Sulzer? A. I did not.

Q. At any time? A. No, sir, I did not.

Q. Had you prepared another statement of the financial receipts and disbursements beside the one that has been ordered in evidence? A. No; I drew up a rough draft from which I copied this one.

Q. In your rough draft as you call it, did you not include the Schiff contribution of $2,500? A. I did not.

Q. Did you have in your rough draft a contribution from J. Jacobs, of Montreal, Canada, of $500? A. I did; I think I did.

Q. In your rough draft? A. In my rough draft.

Q. Where is that rough draft? A. That was destroyed when I drew up the final draft.

Q. Now, the Jacobs check is the very last one upon your list, isn't it? A. I think it is.

Q. For $500? A. Yes, sir.

Q. Under date of November 4th? A. It is.

Q. When did you prepare the rough draft from which you say that was made or completed? A. It was prepared at the time I drew up the final draft.

Q. The rough one? A. Yes.

Q. Now, in that rough one you still think, your recollection is you had omitted the Schiff contribution? A. Yes, sir.

Q. Do you recollect the total in the rough draft that you made of receipts? A. I think it corresponded to this total, because I copied this from the rough draft.

Q. Wasn't it $7,400 instead of $5,400? A. I do not think it was.

Q. In your rough draft? A. I do not think it was.

Q. Did you talk over in the office the preparation of either the rough draft or this completed statement, with anyone? A. With Mr. Horgan, he assisted me in drawing it up.

Q. Didn't you talk over with Mr. Horgan the inclusion in the first statement you were preparing of the Schiff contribution, because of its size? A. I do not think we discussed that subject at all.

Q. It being so large? A. No, I do not think that was discussed.

Q. Now, at the time when you prepared this final statement, wasn't there any discussion between you and Horgan, or anybody else, as to why the largest item you had received in the campaign should be omitted? A. No, sir, there was no discussion about it.

Q. And you can give us no reason at all for its omission? A. I cannot.

Q. I hand you exhibits 97 and 98, and ask you in whose handwriting, if you know, they are, barring the printed name of the Governor? A. In Mr. Sulzer's.

Q. No doubt about that, is there? A. No, sir.

By the President:

Q. Whose name do you say, Mr. or Mrs.? A. Mr.

Mr. Stanchfield.— The Governor's name.

The Witness.— The Governor's name.

By Mr. Stanchfield:

Q. I hand you Exhibit 92, and ask you in whose handwriting the signature "William Sulzer" is? A. That is the Governor's signature.

Mr. Hinman.— Do you mean the endorsement or the signature?

Mr. Stanchfield.— I mean the "W-i-l-l-i-a-m Sulzer."

The Witness.— That is the Governor's own handwriting.

The President.— Will you read that so the other members of the court will know what it is.

Mr. Stanchfield.— I am asking him as to the handwriting of the endorsement upon the back of Exhibit 92.

Judge Werner.— Whose check is that?

Mr. Stanchfield.— That is a check to the order of William Sulzer for $1,000 by Harris & Fuller.

Senator Griffin.— What is the date of that check?

Mr. Stanchfield.— September 26, 1910.

Q. And are the words "For deposit" on the back of that check likewise in the handwriting of the Governor? A. Yes, sir.

Q. I show you also a check, Exhibit 91, July 19, 1910, to the order of William Sulzer, for $500, signed by Harris & Fuller, and ask you whether the endorsement "For deposit, William Sulzer," is in the handwriting of the Governor? A. It is.

Q. I also hand you Exhibit No. 90, June 27, 1910, "Pay to the order of William Sulzer, $6,000, Harris & Fuller," endorsed "For deposit, William Sulzer," and ask you whether or no that endorsement is the handwriting of the Governor? A. It is.

Q. I call the witness' attention to Exhibit 10, and I ask you whether or no the endorsement "William Sulzer" is in the handwriting of the Governor? A. It is.

Mr. Stanchfield.— That is a check dated November 5, 1912, for $1,000 of Mr. Morganthau.

Q. And is the endorsement upon Exhibit 36 in the handwriting of the Governor? A. Yes, sir.

Mr. Stanchfield.— That is the Elkus check for $500?

Q. And is the endorsement upon Exhibit 24, dated October 5, 1912, in the handwriting of the Governor? A. I think it is, yes, sir.

Mr. Stanchfield.— That is the Strauss check for $1,000, F. V. Strauss Company.

Q. I hand you Exhibit No. 53 and ask you whether or no the endorsement is in the handwriting of the Governor? A. I think it is.

Mr. Stanchfield.— That is the Spaulding check for $100.

Q. I hand you likewise Exhibit 71, and ask you whether or no the endorsement is in the handwriting of the Governor? A. It is.

Mr. Stanchfield.— And that is the O'Dwyer check for $100.

The President.— That is the Judge of the City Court?

Mr. Stanchfield.— Yes, sir.

The President.— I remember it.

Mr. Stanchfield.— Those are all the checks that ran into the Boyer, Griswold account.

Q. I hand you check of John Lynn for $500, and ask you whether or no that likewise is the signature of the Governor? A. It is.

Mr. Stanchfield.— That is John Lynn's check for $500 October 10, 1912.

Q. I hand you five different deposit slips on the Farmers Loan & Trust Company, dated October 10th, September 25th, September 12th, October 8th, December 28th, 1912, and ask you whether or no the handwriting upon them and the figures are in the handwriting of Governor Sulzer? A. Yes, sir.

The President.— Have they been offered in evidence?

Mr. Kresel.— They are in evidence.

Mr. Stanchfield.— Yes.

Mr. Herrick.— In one exhibit.

The President.— Give the numbers of the exhibits so as to keep the record straight.

Mr. Kresel.— They are Exhibits 15, 16, 20, 21 and 12. They were originally marked for identification, and subsequently in

evidence, but the stenographer has omitted to strike out the words "For identification." They are in evidence.

Q. I hand you Exhibits 46, 45 and 69, and ask you whether or no the three exhibits are signed by the Governor.

Mr. Hinman.— What were those, Mr. Stanchfield, 45, 46 and 69?

Mr. Stanchfield.— Yes, sir.

A. (After examining exhibits).— Yes, sir.

Q. Those three letters dated respectively November 7, November 8 and November 15, 1912, are, one to Charles A. Stadler (reading): "My dear Senator: Many thanks for your kind telegram of congratulation —

The President.— I think they are already read.

Mr. Stanchfield.— Yes.

The President.— They are three acknowledgments, are they?

Mr. Stanchfield.— Yes.

The President.— Tell them of what contributions.

Mr. Stanchfield.— Two of them to Senator Stadler and one to Mr. Luchow.

Q. Now, I hand you Exhibit M-99, being the order to Harris & Fuller to deliver securities to Commander Josephthal, and ask you whether or no that handwriting at the bottom of that is also that of the Governor (counsel passes paper to witness)? A. (After examining.) It is.

Q. Both the signature and the words "For Mrs. Sulzer"? A. Yes, sir.

The President.— We will suspend now, gentlemen.

The Crier.— Hear ye, hear ye, this Court will now take a recess until two o'clock this afternoon.

Thereupon, at 12:30 o'clock P. M., a recess was taken until two P. M.

AFTERNOON SESSION.

The Crier.— Judges of the Court of Impeachment.

The President.— Call the roll.

The Clerk thereupon called the roll and found a quorum present with the following absentees:

Senator Fitzgerald.
Senator Foley.
Judge Gray.
Senator McClelland.

The Crier.— Hear ye, hear ye, this Court now resumes its session from recess.

The President.— Let the witness resume the stand.

Louis A. Sarecky resumed the stand.

Cross-examination by Mr. Stanchfield, continued:

Q. Mr. Sarecky, I address your attention to Exhibit 3 once more, and to a depositor, under date of October 10th, a contributor under date of October 10th. What is the name of the contributor under that date, upon that exhibit, or opposite that date? A. There are several contributors under that date.

Q. Is there a name there of Elias? A. Yes, sir.

Q. And how much was his contribution, according to your statement? A. One hundred dollars.

Mr. Hinman.— May I inquire what date you are referring to now?

Mr. Stanchfield.— October 10th.

Mr. Hinman.— Thank you.

Q. Did you hear Mr. Hinman make a reference to Mr. Elias in his opening? A. I think I heard him mention his name.

Q. To the effect that there was no intention to conceal the names

of brewers, because Mr. Elias' name appeared upon the statement and he was the president of the Elias Brewing Company?

Mr. Hinman.— I beg your pardon, Mr. Stanchfield, I did not refer to him as president, because I did not know.

Mr. Stanchfield.—Well, as representing the brewing interests.

The Witness.— I heard him make that statement.

Mr. Hinman.— I did not make that statement.

The Witness.— I heard him mention Mr. Elias' name.

By Mr. Stanchfield:

Q. What is the name as you have it upon your statement? A. M. J. Elias.

Q. M. J.? A. M. J. Elias.

Q. I hand you a check under date of October 10, being Exhibit No. 30, and ask you whether or no upon the back of the check is your indorsement? (Counsel passes Exhibit 30 to witness.) A. (After examining) Yes, sir.

Q. The rubber stamp of the Governor's signature and your name under it? A. Yes, sir.

Q. That check is made by whom? A. William J. Elias.

Q. You had no other check from Elias except that one, did you? A. I think that was the only one.

Q. Then that name on your statement is wrong, isn't it? A. Evidently.

Q. And it should have been William J. Elias instead of M. J. Elias? A. That is what it should have been.

Q. That is the only brewer's contribution upon the list of which you know? A. So far as I know. I will have to look at the list again. (Witness examines paper.)

Q. Well, if you think you can find any brewers on there I wish you would look at it? A. I am not very familiar with all the brewers in the city. (Witness examines paper) He is the only one I think on that list.

Q. How much money during that campaign did you receive and deposit as campaign moneys in the Mutual Alliance Trust Company? A. About $12,500.

Q. And you reported in this statement that you prepared disbursements to what extent? A. I think about $7,500.

Q. To speak with exactness $7,724.09, was it not? A. If it is on there that is what I reported.

Q. Well, I am reading from the statement. That left in that deposit that you had received for campaign purposes, roundly speaking, something like $5,000? A. Yes, sir.

Q. Now, you testified here yesterday in response to an inquiry from Senator Hinman to the effect that you disbursed some of that without the knowledge to settle some Western litigation? A. Yes, sir.

Q. Was that a pending litigation? A. No, sir.

Q. What was the amount of the claim? A. I don't remember just what the amount of the claim was; I think about $1,200 or $1,500.

Q. Who was the claimant? A. Fred Hastings and a brother of his, I think.

Q. Residing where? A. In Seattle, Washington.

Q. How did you become cognizant of any such claim? A. A telegram and letter I received from some lawyer in Seattle.

Q. Addressed to whom? A. To me, or it may have been addressed to the Governor, which I opened. I think it was addressed to me personally, I don't remember.

Q. No suit had been brought? A. No, sir.

Q. Have you preserved that? A. Now, just let me think for a moment — no, I don't think any suit had been brought.

Q. Had you preserved the telegram or letter that you received, either or both? A. No, sir, I have not. Now, that I stop to think of it, Mr. Stanchfield, a suit may have been brought and judgment gotten against Mr. Sulzer and they threatened to start suit in New York.

Q. A suit had been brought against him where? A. In the State of Washington.

Q. Have you got any correspondence at all on that subject? A. No, sir, I haven't.

Q. Have you ever heard from the Governor that suit had been instigated against him in the State of Washington? A. I knew about the matter.

Q. If you knew about it, don't you know whether or no suit had been started against him? A. I am telling you, so far as I can remember at present. This was almost a year ago. It is my best recollection that a suit had been started against the Governor, judgment had been procured against him in the State of Washington, and the litigants threatened to start suit against him in New York.

Q. How much now do you think that the amount was, if your attention to it is refreshing your recollection? A. About $1,500, may be a little more or less, I cannot say definitely.

Q. Do you recollect whether or no you paid it by check? A. I telegraphed the money out there.

Q. How did you get the money out of the Mutual Alliance Trust Company for that purpose? A. Why, I drew a check for the order of cash and presented it to the paying teller there and told him what I wanted him to do with it.

Q. Now, on that subject, I ask again, have you any correspondence at all? A. I don't think I have.

Q. Do you recollect what you did with it? A. No, sir, I don't. It may be on file in the office, or perhaps Mr. Sulzer may have it. I haven't got it.

Q. That is about $1,200 to $1,500, somewhere in that neighborhood? A. That was the amount of the claim.

Q. What else did you pay, but first let me ask you, how much did you pay on that claim, if you can state? A. I think about $800 or $900.

Q. That is, that you paid to settle this western matter? A. Yes, sir.

Q. $800 or $900. Now, what else did you pay? A. I paid I think, for postage on books that were going out of this State that were being mailed throughout the United States.

Q. Did you pay postage, or did you use his frank? A. Oh, no, he paid postage on the books.

Q. How much did you pay on books that went outside the State of New York? A. Five cents on each book.

Q. How many books did you send out? A. I cannot tell.

Q. How many outside the State of New York? A. I cannot recollect just how many went outside of the State of New York.

Q. Can you form any estimate? A. Yes, sir. There might have been about 15,000, I think.

Q. That were sent outside of the State of New York? A. Yes, sir.

Q. How much will you say that you paid upon that matter? A. That would be $750.

Q. When you speak of books, do you mean this volume called "Sulzer's Short Speeches?" A. Yes, sir.

Mr. Stanchfield.— I will mark one of these for identification.

The Witness.— That was not the books that were mailed though.

Q. The book was a paper covered book? A. Yes, sir.

By the President:

Q. This is the book apart from the binding? A. Yes, sir. The postage on this book would be more than 5 cents.

Mr. Stanchfield.— I will mark one of these for identification.

(The book was marked Exhibit M-130 for identification.)

By Mr. Stanchfield:

Q. That is the volume that you refer to (handing a book to the witness)? A. Yes, sir.

Q. What else did you pay out of the Mutual Alliance Trust Company? We have eight or nine hundred dollars on the Western claims, $750 for postage on the books outside the State of New York. Now, what else? A. I cannot recall. It is almost a year ago. I cannot remember without having anything before me, for what purposes the money was spent.

Q. In other words, you are utterly unable to tell us for what purpose you disbursed any other moneys out of that account? A. Yes, sir.

Q. In the preparation of the statement that you made for the use of the Governor's counsel in this case, did you not endeavor to refresh your recollection by every means in your power as to what you did with the money in that Trust Company that was the money of Mr. Sulzer? A. I did.

Q. And you can make no other or clearer or more definite statement than that which you now make? A. Yes, sir.

Q. Did you deposit in the Mutual Alliance Trust Company all of the contributions that passed through your hands? A. Every one of them.

Q. Did you have any account in the name of anyone else other than yourself during that period in which moneys were deposited? A. No, sir.

Q. Either in the Mutual Alliance Trust Company or in any other fiscal institution? A. No, sir. That was the only account I ever had.

By the President:

Q. Was that opened at the time of the campaign? Or did you have a bank account before? A. I had my own bank account there before, in that same bank.

Q. Were those both the same account? A. Yes, sir.

Q. Your money and the campaign money? A. Yes, sir.

The President.— Is that all?

Mr. Stanchfield.— I have three or four isolated things to which I wish to call his attention, and I will have done.

By Mr. Stanchfield:

Q. Was your attention in any way directed during the campaign to a contribution from Mr. Charles Kohler? A. I don't remember.

Q. As contribution in his behalf made by Mr. John H. Rogan, a lawyer of New York? Does that refresh your recollection? A. No, sir, it does not.

The President.— Give him the amount.

The Witness.— May I look at it?

By Mr. Stanchfield:

Q. $2,600. I show you a check, dated November 2, 1912, payable to the order of John H. Rogan, for $2,600, and signed by Charles Kohler, endorsed "Payable to bearer, John H.

Rogan," and ask you whether or no the subject matter of such a contribution came to your attention during the campaign.

(A paper was handed to the witness.)

A. I don't think it did. I think this is the first time I have seen this check.

Q. Did you see any correspondence passing between the Governor and Mr. Rogan with reference to Mr. Coler? A. I can't remember, so much correspondence passed at that time.

Q. I hand you a letter dated New York, November 2, 1912, being the date of the check to which I have called your attention, and ask you whether or no you recognize the signature to that letter (counsel passes paper to witness). A. (After examining) I do.

Q. Whose handwriting is it in? A. It is in the handwriting of Mr. Sulzer.

Q. There is no doubt about that in your mind? A. No, sir.

Q. And you notice the word "Personal" upon the letter? A. I do.

Q. That is also in his handwriting? A. Yes, sir.

Mr. Stanchfield.— I offer it in evidence.

Mr. Hinman.— We object to it on the ground that it is incompetent and no part of the cross-examination, and not a proper subject of cross-examination.

(The letter is passed to the President.)

The President.— Oh, I think it will be admitted.

Mr. Hinman.— On the further ground that there is no connection shown between the letter and the check.

Mr. Stanchfield.— That is a matter of argument.

The President.— Has this been the contribution, has it been the subject of testimony?

Mr. Stanchfield.— No, it has not, if your Honor please.

Mr. Hinman.— No.

Mr. Stanchfield.— It is entirely a new contribution.

The President.— Then I imagine you will have to wait until you connect it, if the objection is raised.

Mr. Stanchfield.— I think I have a right, with all due respect, to put the letter in evidence, and cross-examine the witness with reference to the contents of the letter to see whether or no —

The President.—(Interrupting.) If it is the defendant's letter you can put it in evidence.

Mr. Hinman.— If your Honor please, the vice of it lies in the fact that they haven't connected the check with the letter.

The President.— The letter, however, is evidence. I don't know that there is any connection. It may turn out that it will amount to nothing.

Mr. Hinman.— Until there is some connection, is the point we are attempting to make.

The President.— I think I will let you put it in.

Mr. Stanchfield (Reading):

"COMMITTEE ON FOREIGN AFFAIRS,

"HOUSE OF REPRESENTATIVES,

"WASHINGTON, D. C.

"115 BROADWAY, NEW YORK, *November* 2, 1912.

"(Personal).

"CHARLES KOHLER, Esq., *Piano Manufacturer, 11th avenue and 50th street, New York City:*

"My dear Mr. Kohler.— Many thanks for all you say and all you have done in my behalf. I appreciate it more than words can tell. With best wishes, and hoping to have the pleasure of meeting and greeting you before long, believe me, as ever,

"Sincerely your friend,

"WM. SULZER."

Q. Now, you at that time —

Mr. Kresel.— Have that marked, will you.

(The paper was marked Exhibit M-131.)

Q. You at that time, Mr. Sarecky, were the stenographer employed by the Governor at 115 Broadway? A. Not the only one.

Q. Well, you were one of them? A. One of them, yes, sir.

Q. Looking at that letter, are you able to state whether or not you wrote it? A. No, sir, I cannot tell.

Q. Can't you identify your own typewriting work? A. No, sir, not in those form letters.

Q. In looking at that exhibit and its contents, does it in any way refresh your recollection as to whether or no it was dictated to you or prepared by you? A. It does not.

Q. Well, the expression there, "I appreciate more than words can tell," is quite out of the ordinary run of letters of acknowledgment that have appeared in the case, isn't it?

Mr. Hinman.— Objected to on the ground that it is incompetent and calls for a conclusion. The letters show for themselves whether it is out of the ordinary run.

The President.— Well —

Mr. Stanchfield.— I will withdraw that.

Q. It is in different phraseology from the ordinary letters of acknowledgment?

Mr. Hinman.— Just a moment. That is objected to on the same grounds.

The President.— He can say it is not different. Does that bring it to your recollection?

Mr. Hinman.— Is there any evidence that this witness knows what other letters are in evidence here?

Mr. Stanchfield.— Mr. Hinman asked him all about it.

The President.— He says he wrote the form.

Mr. Stanchfield.— The Senator himself drew it out on his direct examination.

The President.— Yes. Now, looking at the particular phraseology of that letter, does that refresh your recollection?

The Witness.— It does not. I used that same expression probably — oh, ten thousand times since I have been with Mr. Sulzer.

Q. That is, the particular expression "I appreciate it more than words can tell?" A. Yes, sir.

Q. Ten thousand times? A. Fully that.

Q. Was that your expression, if you used it ten thousand times, or was it the Governor's expression? A. I suppose he started it and I continued in it.

Q. You kept it up.

Mr. Hinman.— May I inquire, if your Honor please, whether counsel for the prosecution propose to produce any evidence here connecting that check with that letter, or whether they propose to leave it in the position it now stands?

Mr. Stanchfield.—When you put Governor Sulzer on the stand, I propose to ask him all about that check.

The President.— One moment.

Mr. Hinman.— Let me inquire whether they intend to prove any connection between the letter and the check.

The President.— You have expressed yourselves to each other. You may go on with the examination.

Mr. Hinman.— Let me express myself to the Court, if I may. I move to strike out this evidence on the ground that the mere fact that Mr. Kohler drew his check to a different man than William Sulzer on the second day of November, is no evidence that there was any connection between that check and this letter, and is therefore incompetent.

The President.— I am not prepared to say it is. At a later stage if there is no connection, it may go out. He has got one witness on the stand now. Anything else?

Q. Will you repeat for our information, so that we may have it fresh before the Court, the language of the letters of acknowl-

edgment or the form which you say you prepared during the campaign —

Mr. Stanchfield.— I thought you were going to object.

Mr. Hinman.— I am if I may be permitted.

The President.— He stated that.

Mr. Stanchfield.— The fact that he stated it on direct does not interfere.

The President.— No, I think you have got enough.

Mr. Stanchfield.— That is preliminary.

The President.— Then get to the point you want to ask him.

Mr. Stanchfield.— The difficulty is that in trying to get to the point I cannot make a point out of it without I can get from the witness what he says was the form he used.

The President.— I think you will be able to do it without that, Mr. Stanchfield. Put your question.

Q. You testified yesterday to Senator Hinman, giving him a form of acknowledgment which you say you framed? A. Yes, sir.

Q. I call your attention to Exhibits 38, 43, 127, 59, 44, 64 and 57, and ask you which of those forms of acknowledgment, if any, you prepared or used; and in glancing through them, note the signature to each, so you can say whether or no you did or did not sign each and every one of them. It is suggested when I ask you if you signed them, I mean signed "Wm. Sulzer" at the bottom of them? A. I signed every one of them; and, as for the form, as long as the letter bore in substance what I intended to convey, I never raised the point with any of the stenographers who did the work. Now, in typewriting — may I continue?

The President.— If the counsel doesn't object. Go on.

The Witness.— In typewriting, a train of thought may enter a man's mind, and they may switch off from the regular form, and rather than stop and erase, he will conclude a sentence to make it grammatical.

Q. Did you finish? A. I think so.

Q. How many of these letters did you write? A. I can't tell by looking at that.

Q. You signed them all? A. I signed them all.

Q. I call your attention to one in particular, under date of October 14th, being Exhibit 127, to Col. Barthman:

> "My dear Colonel.— Many thanks for your very kind letter of congratulations. I certainly appreciate all that you say and all that you have done. You are a good friend of mine and can help me very much during the campaign. You know just what to do and how to do it, and a word to the wise is sufficient."

Is that concluding sentence your language? A. It is language that has been used by Mr. Sulzer ever since I can remember.

Q. Then it was language that, if you used it, it came from him? A. From my having been with him.

Q. Do you recollect the letter of Colonel Barthman to the Governor? A. I do not.

Q. I hand you Exhibit M-125, being the letter from Colonel Barthman to the Governor, and ask you whether you opened that letter and took out the check that was contained in it. (Paper handed to witness)? A. It is impossible for me to answer that question either yes or no.

Q. Did you notice upon the face of that letter that he says it is a contribution to his personal campaign? A. I do.

Q. Wasn't it in response to that suggestion, of its being a contribution to his personal campaign, that there was added on to this letter "A word to the wise is sufficient."

Mr. Hinman.— That is objected to, if the Court please, upon the ground that the witness has already testified that he has no present recollection of the transaction.

The President.— He can probe him on that. Can you recollect?

A. I had absolutely no ulterior motive in putting anything in any letters he wrote.

By Mr. Stanchfield:

Q. No one asked you if you had any ulterior motives? A. I don't know the exact wording, but that was the impression that was conveyed to me.

Q. I asked you when you used this language, "you know just what to do and how to do it," and "A word to the wise is sufficient," that language was used because of the expression in the letter to the Governor "I hand you this small contribution toward the expenses of your personal campaign"? A. It was not inserted for that purpose.

Q. All seven of the exhibits to which I call your attention are in different form, different phraseology, are they not? A. In substance the same; in phraseology, different.

Q. Differing in phraseology? A. Yes, sir.

Q. And no single one of them, upon its face, acknowledges the gift or receipt of money?

Mr. Hinman.— Objected to, if your Honor please, upon the ground the letters themselves are the best evidence of what they acknowledge.

The President.— That is true, but we can assume that.

Mr. Stanchfield.— No one of them acknowledges in words the receipt of money.

Mr. Hinman.— The same objection.

The President.— It really ought to be — you can assume that and then ask him your question predicated upon that assumption.

Q. Well, on the assumption that none of those letters make a specific allusion to the receipt of money, why was it that you did not upon the face of the letter acknowledge a check for campaign purposes? A. I think I answered that question before. When I got up the form I tried to make it so broad as to cover every emergency. Now, a letter written to a man who is doing things or to a man who had sent money or a man who had been attending meetings or having them, why, that letter would answer the purpose.

Q. Is that all? A. That is all.

Q. That is the only reason that you have at the moment that you can recall? A. Yes, sir.

Q. For never having made a specific acknowledgment of the receipt of money? A. Yes, sir.

Q. I hand you a letter under date of October 21, being Exhibit No. 48, and note, please, I call your attention now simply to the signature (counsel passes paper to witness.) A. (Witness examines paper.)

Mr. Hinman.—Is that an exhibit in the case?

Mr. Stanchfield.— Yes.

The Witness.— Yes, I signed that.

Q. You signed that letter? A. Yes, sir.

Q. Now, I will read you this letter? (Reading): "New York, October 21, 1912. Ezekiel Fixman, Esq., 55 Liberty Street, New York City. My Dear Mr. Fixman: Your letter to Congressman Sulzer enclosing check for $100 as a contribution from Mr. Steuber was duly received by me during the Congressman's absence on a campaign trip up the State. I know Mr. Sulzer appreciates this very much indeed. I want to thank you also for your good wishes. Hope you will write Mr. Steuber to this effect." Now, that letter you composed in the absence of the Governor? A. I wrote that myself.

Q. In the absence of the Governor? A. Yes, sir.

Q. And upon its face and in terms you acknowledged the receipt of $100 as a contribution to his campaign? A. Yes, sir.

Q. Now, with that thought upon your mind, is it not the fact that it was the Governor who suggested to you that the ordinary letters of acknowledgment should make no reference to the subject of campaign contributions? A. No, sir, he did not.

Q. Well, why did you step aside from the beaten path of ten thousand instances and acknowledge the receipt of money in terms?

Mr. Hinman.— If your Honor please, that is objected to upon the ground that it is incompetent and improper and assumes facts not proven.

Mr. Stanchfield.— He said ten thousand times.

By the President:

Q. Why did you step aside from the usual course in your acknowledgments in these transactions? A. Because in this instance I was acknowledging the receipt of a contribution not direct from the donor himself, but through some other person, and I thought perhaps he would want to use that letter in forwarding it to the person from whom he had received the money.

Q. Well, do you recollect the contributions — Now, keep that thought in your mind — do you recollect the contributions that were made by Mr. Stadler? A. By Mr. who?

Q. Stadler, the brewer, Charles A. Stadler? A. I don't remember that right off hand.

Q. Do you recollect getting from him a request to send to different contributors to the campaign that he had secured an acknowledgment of the receipt of that contribution so as to protect Mr. Stadler and enable the contributors to know that he had turned over the money to Governor Sulzer for the campaign?

Mr. Hinman.— That is objected to upon the ground that it is incompetent and assumes facts not proven.

The President.— Is the letter in evidence?

Mr. Stanchfield.— Oh, yes.

Mr. Hinman.— If your Honor please, the letter does not contain all the insinuations and innuendoes that are contained in the question.

The President.— Let me see the letter for a moment to see if it is fairly the subject under discussion.

Mr. Hinman.— Now, if your Honor please, when we have the letter if we may have the question read so that we may see what is in the question.

The President.— Yes.

(Counsel passes letter to the President.)

Mr. Stanchfield.— The testimony is that — from the witness Stadler upon the stand — we will have to hunt up that record if it has escaped your Honor's recollection — that he asked Gov-

ernor Sulzer to have letters of acknowledgment sent to the different people who had contributed through him to the campaign.

Mr. Hinman.— If I recall, if your Honor please, that is about it. But the question is assuming that Stadler wrote a letter to this witness with a lot of requests and insinuations in it.

The President.— That is my recollection of the testimony, but I can't tell without the testimony. I think you may ask him.

Mr. Hinman.— The statement, if your Honor please —

Q. I hand you —

Mr. Hinman (interrupting).— May we get the question?

The President.— Read the question, stenographer.

(The stenographer thereupon read the question referred to as follows):

> "Do you recollect getting from him a request to send to different contributors to the campaign, that he had secured, an acknowledgment of the receipt of that contribution so as to protect Mr. Stadler and enable the contributors to know that he had turned their money over to Governor Sulzer for the campaign?"

The President.— That is certainly unobjectionable because it assumes nothing. It asks whether he recalls such a thing.

The Witness.— No, I don't remember receiving any such request from Senator Stadler.

By Mr. Stanchfield:

Q. Well, did you have any talk with Governor Sulzer about the parties that Senator Stadler had persuaded to make contributions to his campaign? A. I did not.

Q. Did you sign Exhibits 58 and 57 (two papers were handed to the witness)? A. I did.

Q. They are addressed, 57, to George C. Hawley, Dobler Brewery, Albany, N. Y.; the other, to Mr. Hoffman, 55th street and Third avenue., New York. Don't each of those letters purport to

be forms of acknowledgment that you wrote? A. I don't get the question.

Q. Don't they purport to be forms of acknowledgment? A. Yes, sir.

Q. Letters of acknowledgment? A. Yes, sir.

Q. There is not, upon their face, any allusion to the amount of the contribution that either of these people gave, is there?

Mr. Hinman.— That is objected to upon the ground the letters themselves are the best evidence of what their contents are.

The President.— Objection sustained. You can assume that, if you wish to ask him.

Q. Now, assuming, in the language of the Presiding Judge, that there is nothing upon the face of those two letters, to Hawley or to Hoffman, acknowledging a contribution, those two letters being in response to a request of a third party who had procured the contribution, why didn't you, upon the face of those letters, indicate it?

Mr. Hinman.— That is objected to upon the ground it is incompetent, and assumes facts not proven.

The President.— Objection overruled.

The Witness.— Will you please repeat the question?

Q. I asked you why you stated a few moments ago that the reason you specified the receipt of $100, was because it was received through a third person? A. A third person from abroad, I should have added that.

Q. I see. Does the fact that it came from abroad change your answer? A. No, sir.

Q. Very well, then we will hang on to New York.

Mr. Hinman.— I object to that on the ground it is improper.

The Court.— Yes, that will be stricken out. Put your question.

Mr. Stanchfield.— Is it stricken out that we will hang on to New York?

The President.— Yes, they object to it.

Mr. Hinman.— It may be conceded that counsel will hang on to New York.

Q. The two letters, assuming they do not specify a contribution, are to enable a third party to convince the givers that they had made contributions. Why didn't you, upon the face of those letters— A. I don't know.

Mr. Hinman.— I object to that as incompetent.

By the President:

Q. Why didn't you specify it? A. Probably when those letters were written the person who wrote them didn't know that it was, that the contribution had been received through some third parties.

By Mr. Stanchfield:

Q. You say you wrote them? A. I didn't say anything of the kind.

Mr. Hinman.— I object to that.

The Witness.— I signed them.

Mr. Hinman.— That assumes something the witness has not said.

Q. When you sign a letter, won't you acknowledge responsibility for its contents? A. I do.

Q. You signed both of these letters? A. Yes, sir.

Q. How do you know you didn't write them? A. I don't say I did, and I don't say I didn't. I may have written them. There were hundreds and thousands of letters being sent out.

The President.— Is that all?

Q. I think you testified yesterday that you settled this western claim without the knowledge of Governor Sulzer? A. I did.

Q. Did you ever advise him of the fact? A. I did.

Q. When? A. When he came back, or the first time I saw him.

Q. Can you tell about when that was? A. Well, I may not have done it the first time I saw him, but I told him the first time

it had occurred to me, and probably a week after I had done it; maybe a little less.

Q. All of the deposits that went into the Mutual Alliance Trust Company were campaign contributions, were they not?

Mr. Hinman.— That is objected to upon the ground it is incompetent and calls for a conclusion.

The President.— Objection overruled.

Q. That is what you put in your authorization that you took over there, isn't it? A. I deposited moneys I had received there.

Q. For campaign purposes? A. Well, for whatever purposes I had received them.

Q. Didn't you put on the face of the authorization that you took over to the Mutual Alliance the words "Campaign Contributions"? A. Yes, sir.

Q. You took from those campaign contributions a sufficient amount of money to pay this western claim?

Q. And of the fact that you had made that use of that money you advised Governor Sulzer? A. I did.

Q. And that was, of course, before this statement, Exhibit 3, was made out? A. Yes, sir.

Q. What became of this power of attorney that you say you at some time had during your connection with Governor Sulzer?

The President.— Is it worth while to go into that, Mr. Stanchfield?

Mr. Stanchfield.— I simply want to find out what was done with it.

The President.— Well —

Q. Was it destroyed? A. Not that I know of. I don't think it was destroyed. I may have it among some papers. I have not had occasion to refer to it.

Q. How many years ago did you get it? A. I got it in 1906.

Q. Have you ever seen it from that day to this? A. I don't think I have.

Mr. Stanchfield.— That is all.

The President.— That is all.

Re-direct examination by Mr. Hinman:

Q. State, if you will, when you made the entries upon the pencil tablet, or when you made the memorandum on your pad or sheets, of checks for money received during the campaign? A. When I received them?

Q. State whether or not you received a different — whether you used a different sheet for each day, or sheet or paper, or a different sheet for each entry? A. No. I got on as many entries as I could on each sheet. Sometimes I would use two sheets, sometimes three, sometimes one.

Q. Has your attention ever been called to all the deposit slips, all deposits which you made in the Mutual Alliance Trust Company during the campaign? A. No, sir; I don't think they have.

Mr. Hinman.— If you will let me see all those deposit slips.

Mr. Kresel.— There they are. There are twenty-one of them.

The President.— Have you got his account current? Isn't that in evidence?

Mr. Kresel.— That is in evidence too.

The President.— That will show whether there are more than twenty-one.

Mr. Hinman.— There are just twenty-one, are there not?

Mr. Kresel.— I think there are. I have them all.

The President.— Give that to the Senator and he can see whether there are twenty-one.

Q. I show you —

Mr. Hinman.— You say this has been in evidence?

Mr. Kresel.— It is in evidence, yes.

Mr. Hinman.— Where is the mark on it?

Mr. Kresel.— There.

Q. I show you Managers' Exhibit 26½ and ask you what date that shows as the date of the first deposit? A. September 10th — no, August 3, 1912 — September 10th. These are deposits?

Q. On this side here are the deposits.

Mr. Kresel.— No, those are the deposits. September 10th is right.

The Witness.— September 10th.

Q. And at the top does it show that an account was already running there? A. Yes, sir.

Q. Now I show you these deposit slips.

Mr. Hinman.— They were all marked as one exhibit, were they?

Mr. Kresel.— One exhibit.

Mr. Hinman.— I don't know which one was marked.

Mr. Kresel.— On one of them, on the back. There it is, No. 27.

Mr. Hinman.— Well, we will assume it is Managers' Exhibit 27.

Q. I show you one and ask you what date that is? A. September 10, 1912.

Q. Is that your money, your own money? A. Well, I should say it was, I think it was. I cannot just remember. I may have deposited it for some one. It may have been a check I put through for some one; I cannot recollect.

Q. In any event did it have anything to do with any campaign? A. No, it didn't.

Q. I show you another one of these exhibits and ask you what date that is? A. September 30, 1912.

Q. That have anything to do with this campaign? A. No, sir.

The President.— How much is it?

The Witness.— Thirty-four dollars and seventy-five cents.

The President.— Thirty-four dollars and seventy-five cents.

The Witness.— Yes.

Mr. Brackett.— How much was the September 10th one?

The Witness.— Ninety-three dollars and sixty cents.

The President.— What?

Mr. Brackett.— The first one.

The President.— They would like the amount of the first deposit.

Mr. Kresel.— He has already given it.

Q. I show you another one of these deposit slips of these twenty-one and ask you what date that is? A. September 27, 1912. That is for $80.

Q. I show you another deposit slip of these twenty-one and ask you what date that is? A. December 31, 1912, for $372.93.

Q. Taking these other deposit slips, giving the dates of them, the others of the twenty-one, and state in whose handwriting they are. You say that is your name at the top, Louis A. Sarecky and the figures? A. That is in my handwriting.

The President.— In your handwriting?

The Witness.— Yes.

Q. Give the date of each first? A. October 1, 1912, and it is not a campaign contribution.

This is in my handwriting, October 5, 1912.

October 8, 1912, that is not my handwriting. I cannot place it.

October 11, 1912, I think that is in the handwriting of R. K. Weller.

Q. The same R. K. Weller who was employed there in the office during the time and whom you mentioned yesterday? A. Yes, sir.

October 19, 1912, I think that is Mr. Horowitz' handwriting.

Q. The same Charles Horowitz whom you named yesterday? A. Yes, sir.

Q. As being employed there in the office? A. Yes, sir.

October 24, 1912, my handwriting.

November 7, 1912, my handwriting.

November 12, 1912, handwriting of Mr. Cisner.

Q. And is that the same Cisner whom you mentioned yesterday as one of the employes there in the office? A. Yes, sir.

November 14, 1912, Horowitz.

November 20, 1912, I think that is my handwriting.

November 21, 1912, Mr. Horowitz.
October 26, 1912, Mr. Cisner.
October 21, 1912, my handwriting.
November 4, 1912, my handwriting.
October 15, 1912, my handwriting.
The next one is typewritten.

Mr. Kresel.— Give the date of it?

The Witness.— October 19, 1912.

Q. In whose handwriting do you think the figures are on the deposit slip of November 4, 1912? A. I cannot say under oath whose it is.

Q. How were these deposit slips made out and sent to the bank — did you take them to the bank always or were they sometimes sent by others? A. More often they were sent by others. They were taken there by others.

Q. These slips on which you kept a pencil memoranda of moneys received and paid out you have stated on your cross-examination that when you came to make up this statement of November 13, 1912, that some of those slips were not there? A. I said that.

Q. And do you know what had became of them? A. No, sir, I may have mislaid them. They may have fallen down in the rush and bustle of the busy times we were having. They may have been unintentionally or accidentally mislaid; I don't know what became of them.

Q. Who assisted you in making up that statement? A. Mr Horgan.

Q. Mr. Matthew Horgan? A. Yes, sir.

Q. Is he in court to-day? A. Yes, sir.

Q. And have you seen him in court during the various days when you have been present? A. Yes, sir.

Q. And was he there in the office during a portion of the time when these checks and moneys were being received by you? A. Oh, yes.

Q. Did he assist in opening letters and taking therefrom checks and moneys? A. He assisted in doing everything there was to be done.

Q. What assistance did he render you in making up this statement of November 13, 1912, if any? A. He brought down from his office an adding machine and helped me figure up and finally I put it in final shape.

Q. While you have been associated with Governor Sulzer, so far as you know did he keep any books of account? A. So far as I know he didn't.

Q. What were his habits with reference to keeping his office well arranged and his matters in order? A. There was no method at all.

Q. This western lawsuit that you have spoken of. Do you know for what it was brought or what did you understand it was brought for? A. I think it was brought for services rendered to some company in which the Governor was interested.

The President.— How is it material? You don't want it. It is no harm but it does not help the record.

Mr. Brackett.— It is competent to show that it was not for services rendered in the campaign.

The President.— You can assume that. A man would not sue outside the State of New York for campaign expenses in New York State. I don't think we need it in evidence.

Q. Look at the statement marked Exhibit 3, November 13th, and tell me whether or no the Colonel Barthman check or the amount of the check appears there.

Mr. Kresel.— It is already in evidence.

The Witness.— Yes, sir, it is.

The President.— Really, Senator Hinman, you are falling into the same thing that you criticise in your adversary. The thing speaks for itself but as no objection has been raised by them you can go on.

Q. Take up the matter for a moment of the duties of the members of the Bureau of Deportation of Alien Insane. What were their duties?

Mr. Kresel.— We object to that.

The President.— Just read the question.

Mr. Kresel.— We have no objection to stating what his duties were, but not what others' duties were.

The President.— Yes. You have asked him if there were physicians underneath him. He may be able to show that for those places a physician would not be necessary, and it would be entirely proper in his position that a physician should not be employed. The Court cannot say. You may answer.

The Witness.— The duties during the time I was there, as near as I could learn, was to ascertain which of the patients in our State hospitals were citizens or not. If they were not citizens and had been in this country but three years they were deportable. Then it was up to us to make arrangements with the steamship company and to designate attendants to accompany them to the place where they should be sent.

Q. Did the members of that bureau have anything to do in the first instance with determining the sanity or insanity of the alien insane who were subject to deportation? A. No, sir, they did not.

Q. Did their duties cover services related to persons who had already been declared insane, and who were inmates of State hospitals for the insane? A. That was the extent of their duties.

Mr. Hinman.— Nothing further.

The Witness.— May I amend an answer I made before?

The President.— Yes. If you have said anything and you want to correct your answer, you may do it.

The Witness.— In addition to the other duties, they had to interview the relatives of the patients, and ascertain whether they could afford to pay their passage, and whether the patient had relatives abroad to whom he could be sent.

The President.— Anything else?

The Witness.— That is all.

Mr. Hinman.— Nothing further.

Senator Griffin.— Mr. President.

The President.— Senator Griffin.

Senator Griffin.— I would like to ask the witness a few questions.

The President.— Yes, you may.

By Senator Griffin:

Q. You stated this morning, in answer to Mr. Stanchfield, that you got the canceled checks from the Mutual Alliance Trust Company for the purpose of using them, and that you did use them in preparing your account of November 13th.

Mr. Hinman.— If the court will permit me, the Senator is in error in his assumption of what the witness testified to. He did not so testify, I am quite sure.

The President.— Well, ask him if he stated so, Senator.

Q. My recollection is that the question of Mr. Stanchfield was to this effect: If these canceled vouchers were of so little importance, why did you take the trouble to go to the bank and bring them back? A. They were given to me at the bank; I left my book to be balanced, to find out what money there was there.

Q. But in any event, you got your book from the bank? A. I did.

Q. And did you not state to Mr. Stanchfield on your cross examination that you used these canceled vouchers for the purpose of preparing this statement of November 13th. A. Such as I could use, I did use.

Q. You did use them, however? A. Some of them.

Q. You had them before you? A. I did. I did not have a complete set before me, because the book was balanced, if I remember correctly, the latter part of October, and the statement was made up some time in November.

Q. Yes; but you had all of those canceled vouchers from the bank, which had been returned to you up to the date of the balancing of your book? A. Yes, sir.

Q. Now, you had not — A. (Interrupting.) All those that had been returned to the bank at that time.

Q. Returned from the bank? A. I mean returned to the bank.

By the President:

Q. All that were cashed at that time would be returned to you when your account was balanced? A. Yes, sir.

Q. That was charged against you in your books? A. Yes, sir.

Q. Now, the Senator wants to know if you did not have all the checks that had come into the bank up to that time, before you, when you made this return? A. I had all that the bank had given me.

By Senator Griffin:

Q. Now, in addition to the canceled checks, you had the stubs in your check book, did you not? A. I did.

Q. And you also had the memorandum that you made from day to day of your receipts and disbursements? A. I did.

Q. As treasurer of this campaign committee? A. (No answer.)

The President.— Speak, witness.

The Witness.— Yes, sir.

Q. Now, there were three groups of memoranda that you had to refresh your recollection? A. Yes, sir.

Q. And to enable you to prepare an accurate statement? A. Yes, sir.

Q. Is that not so? A. That is so.

Q. And yet you stated on cross examination yesterday, and you repeated to-day, that in answer to Governor Sulzer as to whether or not the statement was correct, that it was "as accurate as I could get it?" A. Yes, sir, I said that.

Q. Is that your language? A. That is the language.

The President.— Is that all?

Senator Griffin.— I would like to refer to the check of $2,500.

The President.— The Schiff check?

Mr. Hinman.— That has all been gone over.

By Senator Griffin:

Q. The Schiff check which you deposited on November 15, 1912? A. Yes, sir.

Q. You stated, I believe, that this check was delivered at your office? A. I did.

Q. To whom, and by whom? A. It was delivered to me personally by a messenger from Mr. Schiff's office.

Q. Did you show it to Governor Sulzer? A. I don't think I did. I deposited it.

Q. Did you tell him that you had received it? A. I did.

Q. Were you here yesterday — or were you here last week, when Mr. Stadler testified. A. No, sir, I was not.

Q. Have you been made acquainted with his testimony. A. No, sir, I have not.

Q. I call your attention to the record in this case, page 631, this question was asked of Mr. Stadler:

(Reading:)

"Q. I was not trying to get that letter. I was directing my inquiries to letters that you wrote to Mr. Sulzer about these various contributions? A. I wrote a letter—let me see—yes, I wrote a letter to Mr. Sulzer, I think, about the acknowledgment.

"Q. What about the acknowledgment? A. Acknowledging the amount of money that he received from the various parties from whom I had received the money.

"By the President:

"Q. As I understand your statement, you mean that you wrote to him that he should acknowledge to these various parties their contributions? A. Yes, your Honor."

The President.— Now, do you—

Q. (Interrupting.) Now, do you remember that Mr. Stadler wrote such a letter to Governor Sulzer, or whether such a letter was received in Governor Sulzer's office. A. I have no recollection of that.

Q. Do you recollect having acknowledged the contributions of these various contributors who were obtained through the instru-

mentality of Mr. Stadler? A. I don't remember acknowledging those letters, except as they were just now shown to me, and which that I said that I have no recollection of the entire transaction.

Senator Velte.— Mr. President.

The President.— Senator Velte.

By Senator Velte:

Q. Mr. Sarecky, did you ever tell Governor Sulzer how much money you received? A. No, sir, I did not.

Q. You received you say about $12,500? A. About that.

Q. Did Governor Sulzer ever ask you how much you received? A. No, sir; I don't think he ever asked me, but when the campaign was over he asked me if there was any money left and I told him there was about $60. No, I said there was a little sum left, I don't remember the total. I found out and had my books balanced and he said whatever it is, to buy myself a suit of clothes with it.

Q. And all the money Governor Sulzer ever gave you was about five or six hundred dollars in actual — A. In actual cash.

Q. How much was the checks? A. As I have testified, there was the $200 Pinkney checks, and there may have been one or two more checks, but not over $250.

Q. Did you call Governor Sulzer's attention to the amount of moneys shown to have been expended in the statement? A. No, sir; I did not call his attention to anything in the statement. I presented it to him. I told him this was the statement and he asked me if this was all right. I said it was as accurate as I could get it up, and he said all right and signed it.

Q. He took your word for it? A. Yes, sir.

Senator Wagner.— Mr. President.

The President.— Senator Wagner.

By Senator Wagner:

Q. At the time you made up your statement you knew that you had received about $12,000 in campaign contributions, didn't you? A. I did.

Q. And in making out your statement you put in that you had received but $5,000 in campaign contributions? A. Yes, sir.

Senator Duhamel.— Mr. President.

The President.— Senator Duhamel.

By Senator Duhamel:

Q. Had you prepared any campaign statements for Governor Sulzer before this time? A. I testified to that by saying that I may have done the clerical work; it may have been dictated to me and I typewrote it, but of my own knowledge I never got up a single campaign statement.

Q. In this statement which you prepared last fall, what section of the State law did you suppose you were complying with? A. I was complying with the printed portion on top of the statement.

Q. You were familiar with that section? A. Generally.

Q. Had anybody called your attention to the error you had committed in this matter of receipts? A. I didn't hear you.

Q. Had anybody called your attention to this matter of receipts which was not required by that section of the Penal Law? A. No one had called my attention to that.

Q. Had anybody called your attention to the Corrupt Practices Act? A. No, sir.

Q. Nobody informed you that you had violated section 542 of the Corrupt Practices Act? A. No, sir.

Q. The matter of personal expenses. Had anybody called your attention to section 546 of the Corrupt Practices Act? A. I don't know what 546 is.

Q. As to statements of campaign receipts and payments. A. Not in detail. It was generally called to my attention that a statement had to be filed.

Q. Nor had anybody called your attention to section 350, which permits you to amend or correct? A. No, sir.

Q. Any statements? A. No, sir. My attention was never called to that.

Senator Thompson.— Mr. President.

The President.— Senator Thompson.

By Senator Thompson:

Q. You have been with Governor Sulzer how many years? A. Since December, 1902.

Q. Do you remember when Governor Sulzer put on the statute books the Corrupt Practices Act? A. No, sir; I do not.

The President.— That is all.

Mr. Brackett.— I think, if your Honor please, I ought to object to that question on the ground it does not state in accordance with the exhibit, when Governor Sulzer wrote and put it on the statute books.

The President.— What matter is it?

Mr. Brackett.—A part of the Court demand it.

The President.— That is all.

Mr. Hinman.— John N. Carlisle.

The Clerk.— What is your full name, please?

The Witness.— Mr. John N. Carlisle.

The Clerk.— You do solemnly swear that the evidence that you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer, as Governor of this State, shall be the truth, the whole truth and nothing but the truth, so help you God?

The Witness.— I do.

JOHN N. CARLISLE, a witness called in behalf of the respondent, having been first duly sworn in accordance with the foregoing oath, testified as follows:

Mr. Hinman.— If your Honor please, there was marked for identification by the counsel for the prosecution a report made by Mr. Carlisle in connection with the so-called Prime bills. They have returned it and I haven't it here; I supposed it was here. I want to identify a duplicate of it by Mr. Carlisle.

Mr. Kresel.— Subject to correction, I think they can use a copy.

Mr. Hinman.— I ask, then, to have Mr. Carlisle's report, dated May 22, 1913, on those two bills, marked in evidence, with the understanding that if it differs, or if there is anything erroneous about it, it may be corrected.

(The document was marked Exhibit M-132.)

Mr. Hinman.— That is all, Mr. Carlisle.

Mr. Todd.— Just a moment, Mr. Carlisle.

Mr. Hinman.— There were not any questions asked him.

The President.— Not a single question was asked him.

Mr. Todd.— One moment. I would like to withdraw, then, the stipulation that we just made. We want the opportunity to ask him one question about one other report, that is all.

The President.— Is there any objection? To save him coming again? If it is only to identify one paper.

Mr. Hinman.— It is already in evidence and marked Exhibit M-132.

The President.— Do you want to identify another paper?

Mr. Todd.—Another report upon the same bill.

Mr. Hinman.— They can call him. This is a duplicate of what has already been marked for identification, and we had a right to suppose it was here.

The President.—All right. Mr. Witness, you will have to come again.

Mr. Hinman.— Hugh J. Reilly.

For the information of the Court I will read this report. It is short. Some of the members of the Court desire to have it read.

May 22, 1913.

Honorable William Sulzer,
Governor of the State of New York,
Albany, N. Y.

Sir.— In relation to Senate Bill 2004 introduced by Senator Emerson, and providing for the reappropriation of cer-

tain unexpended balances for the improvement of new State routes in the counties of Essex and Warren, and Assembly bill 2373, introduced by Assemblyman Prime, designating additional State routes in the counties of Essex and Warren, which you have referred to me for an expression of opinion thereon, I would respectfully report as follows:

There is a great amount of opposition to these bills throughout the State generally upon the just ground that the counties of Essex and Warren have now under construction the total mileage of State routes provided by section 120 of the Highway Law to be paid out of the first $50,000,000 and that it enables them to designate new State routes, and would be a violation of the provisions of the second referendum act.

The questions which arose under the first bond issue in relation to expedited routes were passed upon by the Legislature and by the Court of Appeals so that these questions are now closed matters. Due to the Legislature providing for the expedited routes, the counties of Essex and Warren were enabled to complete or put under contract their entire system and there is practically sufficient moneys on hand of the first $50,000,000 bond issued to pay for these routes.

The second referendum act providing for the second $50,000,000 provides arbitrarily that $20,000,000 of the amount raised should be apportioned among the counties, according to the provisions of the act, and that no State routes should hereafter be built except the particular State routes which were already designated in section 120 of the Highway Law.

As a result of the legislation and the framing of the second referendum act, the situation is now that there is a provision under the second referendum act providing the sum of $418,000 for State routes in the county of Warren. There are no State routes in Essex and Warren counties except those as designated by section 120, which are now under contract and if this money can be available in some way, it will have to revert and go into the sinking fund to pay the bond issue.

In order to fairly consider the questions involved the people of the counties of Essex and Warren contend that the entire

problem should be settled upon the wording and meaning of the second referendum act, and that this act clearly provides that they were entitled to their share of the second fifty million dollars, and that they should not be foreclosed from the benefits of having their equitable proportion of this amount.

The situation is also presented that this question is entirely confined to the counties of Essex and Warren and while there are no other counties that are similarly situated, yet before the next session of the Legislature all the balances in such counties that were available will have to be expended and no other county can ever come again before the Legislature and ask for similar legislation.

The question then at issue is whether or not these bills should be signed and the State be permitted to build in the counties of Essex and Warren State routes with such money as may be available, or whether it shall be permitted to revert to the sinking fund. While upon its face it would look as if these bills would result in transferring $782,000 as a matter of fact the amounts which will be transferred will not exceed $300,000 in Essex and $75,000 in Warren, and will only make available approximately $375,000 for use for the additional State routes, and the balance of the money will either have to be used in improving existing State routes or revert into the sinking fund.

If the signing of these bills would create a condition whereby in the future similar legislation could be enacted, I would be opposed to the signing of the bill, but in view of the fact that the counties of Essex and Warren are sparsely populated and that the proposed routes are practically through sections which will be used by summer traffic and by the people of the State generally, and that if the localities were called upon to build these roads, they probably would never be constructed, and they are greatly needed, I think the bill should be signed.

This matter was very carefully considered by the Legislature and was carried by a large majority in both Houses showing that the sentiment of the members of the Legisla-

ture was favorable to the utilization of this money rather than allowing it to revert into the sinking fund.

My decision is also reached upon the further ground that not a dollar of this money appropriated for the counties of Essex and Warren of the second fifty million could possibly be used in any other county of the State and that the appropriation of the unexpended balances does not take from any other section of the State a single dollar.

Yours very truly,

J. N. CARLISLE,
Commissioner."

Mr. Reilly, will you be sworn?

The Clerk.— You do solemnly swear that the evidence that you shall give upon this hearing, upon certain articles of impeachment preferred against William Sulzer, as Governor of this State, shall be the truth, the whole truth and nothing but the truth, so help you God?

The Witness.— I do.

The Clerk.— What is your full name, please?

The Witness.— Hugh J. Reilly.

HUGH J. REILLY, a witness called in behalf of the respondent, having been first duly sworn in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Hinman:

Q. Mr. Reilly, where do you live? A. I live in the Prince George Hotel, in New York.

Q. Speak louder so that the farthest judge can hear you. A. I live in the Prince George Hotel, in New York, and in Acra, Greene county.

Q. What is your age? A. My age?

Q. Yes. A. 70, this winter.

Q. Do you know Governor Sulzer? A. Yes.

Q. Did you loan him any money in 1912? A. Yes, sir.

Q. How much?

Mr. Stanchfield.— I object to that as irrelevant and immaterial.

The President.— I think that comes within his right. If it is near enough to the time to show that this money that he gave was from other moneys — you may answer. A. Yes, sir.

Q. When did you make that loan?

Mr. Brackett.— You didn't get an answer to your question.

Q. When were those loans made? A. They were made at different times, from August to November.

Q. In what amounts? What was the total amount of the moneys so loaned by you to Governor Sulzer? A. $26,500.

Q. Has any part of that money so loaned by you to Governor Sulzer been repaid? A. No, sir.

Q. Are you able to fix the first date on which you made a loan to Governor Sulzer in August or September or October or November, 1912? A. The first date was on August 8th.

Q. How much was it?

Mr. Stanchfield.— August 8th.

Q. August 8th? A. Yes, sir.

Q. How much was it? A. That was $1,500.

Q. August 8th, $1,500. When was the next loan made by you to Governor Sulzer? A. September 5th.

Q. How much? A. $5,000.

Q. $5,000. When was the next? A. September 12th.

Q. How much? A. $5,000.

Q. When was the next? A. September 14th.

Q. How much was it? A. $3,000.

Q. When was the next? A. October 7th.

Q. How much was that? A. $10,000.

Q. When was the next loan made? A. November 8th.

Q. How much? A. $2,000.

Q. Were you subpœnaed as a witness before the Frawley Investigating Committee? A. Yes, sir.

Q. Did you testify before that Committee? A. Yes, sir.

Q. Did you testify to these loans?

Mr. Stanchfield.— Wait a moment. I object to that.

The President.— I do not see how it is material or competent.

Mr. Hinman.— Nothing further.

The President.— Cross-examine.

Cross-examination by Mr. Stanchfield:

Q. Mr. Reilly, are you the same Mr. Hugh J. Reilly who was interested in the years 1906, 1907, 1908, 1909, 1910, 1911, or 1912, in which is known as the Cienfuegos contract in the Island of Cuba? A. Yes, sir.

Q. That contract, generally speaking, was for the construction of a system of waterworks on the island of Cuba at the city of Cienfuegos, was it not? A. Yes, sir.

Q. Now, was there a gentleman by the name of Jose Antonio Freas, a sometime senator of Cuba, that was interested in that business contract with you?

Mr. Hinman.— Objected to on the ground it is immaterial and irrelevant.

The President.—Well, that is —

Mr. Stanchfield.— That is preliminary. That can't hurt anybody.

The President.— I imagine so. You may answer, witness.

The Witness.— He was interested.

Q. I didn't ask you how. I don't want to spend the time. I just want to know if he was interested? A. He was a lawyer.

Q. Was he interested directly or indirectly in that business?

The President.— I think he may answer. Only as a lawyer, or did he have an interest?

The Witness.— He had an interest for being a lawyer.

Q. Very well. I am not concerned how he had it; he had an interest in it. Now, that contract at one time was revoked or rescinded by the Cuban authorities, was it not? A. Yes, sir.

Q. And you sought its reinstatement?

Mr. Hinman.— If the Court please, that is objected to on the ground that it is immaterial and irrelevant.

The President.— How is that material.

Mr. Stanchfield.— I will get at it in a moment.

The President.— Of course, you cannot show the Court anything that this witness has done —

Mr. Stanchfield.— I will get right at it as fast as I can.

The President.—You cannot have him discredit the defendant here —

Q. You sought, did you not, to have it reinstated? A. Yes, sir.

Mr. Hinman.— If the Court please, I make the same objection on the same ground.

The President.— Objection sustained.

Q. At the time you had that contract, and while it was rescinded, was Mr. Sulzer — Governor Sulzer — a member of Congress?

Mr. Hinman.— That question is objected to on the ground that it is incompetent and irrelevant.

The President.— Objection sustained.

Q. Did you go to Washington and enlist the services of Congressman Sulzer to aid you in the reinstatement of that contract?

Mr. Hinman.—I make the same objection on the same grounds.

The President.— Sustained.

Q. And at that time, did Governor Sulzer, then Congressman Sulzer, write letters for you to the President of the United States in regard to the restoration of that contract?

Mr. Hinman.— I make the same objection on the same ground.

The President.— Same ruling.

Q. Was there, in the summer of 1912, an instalment paid to

you or the corporation in which you were interested, for the balance due upon the work of constructing those water works at the city of Cienfuegos, the sum of upwards of half a million dollars?

Mr. Hinman.— I make the same objection on the same ground.

The President.— Same ruling.

Q. Now, before August 8th, Mr. Reilly, 1912, you had made a loan to Governor Sulzer, hadn't you?

Mr. Hinman.— That is objected to on the ground that it is immaterial and irrelevant, if your Honor please.

The President.— I think he may ask him that.

Q. You had made before that date a loan to Governor Sulzer, hadn't you? A. (No answer.)

The President.— Answer, witness.

The Witness.— Yes, sir.

Q. At that time, you took from Governor Sulzer a note and collateral security, did you not? A. Yes, sir.

Q. When you made this loan on August 8th, of $1,500, on September 5th of $5,000, on September 12th of $5,000, on September 14th of $3,000, on October 7th of $10,000, and on November 8th of $2,000, did you take from Governor Sulzer any written evidence of that loan or of those loans? A. No, sir.

Q. Did you take any collateral security of any kind? A. No, sir.

Q. Was any time of payment with reference to any of those loans agreed upon? A. He was to pay in February.

Q. First calls for yes or no. I asked you was any time for the payment of them agreed upon between you? A. Yes, sir.

Q. At the time when each loan was made? A. No, sir.

Q. And when was there a time for the payment of that, if ever, agreed upon? A. When he got the $10,000.

Q. That was on October 7th? A. Yes, sir.

Q. With reference to the four preceding loans aggregating $14,500, at the time when you say they were made, no time whatever as to their payment was ever talked of, was there? A. Yes,

sir, he was to pay it back as soon as he was able to; as quick as he could.

Q. Is that all? A. That was all, sir.

Q. That is all that was said upon the subject of that? A. Yes, sir.

Q. Was there anything said as to the rate of interest? A. No, sir.

Q. Now, when you made these loans, as you claim, they had been, on the 8th of August, the 5th of September, the 12th and 14th of September, the 7th of October, and the 8th of November, did you make them by check? A. No, sir.

Q. You made those loans, did you not, in bills, in currency? A. Cash.

Q. Well, I say in currency? A. Yes, sir.

Q. In currency? A. Yes, sir.

Q. In other words, you would send to your bank and get bills and let him have them? A. Yes, sir.

Q. Was anyone present at the time except you and the Governor? A. No, sir.

Mr. Stanchfield.— That is all, sir.

Mr. Hinman.— Nothing further.

The President.— That is all, witness.

Mr. Kresel.— One minute.

Q. The first loan to which I called your attention, when you say you did take a note and collateral, in that loan, in that instance, you gave him your check, didn't you? A. No, sir, I gave him cash; but that loan was two years before that.

Q. Wasn't it by check? A. No, sir.

Q. Are you sure of that? A. Yes, sir.

Q. Have you looked up your books? A. Yes, sir.

Q. When? A. You mean the $1,500 loan?

Q. No, I am talking about a loan —

The President.— Just call his attention to it; he doesn't catch it.

Q. I am talking about a loan of $10,000 made in the month of June, 1911, when you took his note, and the collateral security.

The President.— That is the first loan of which you have spoken on the stand.

Q. I ask you whether, when you made that loan in 1911, in June, it was not by check? A. No, sir, it was cash I gave him, and he gave me stock —

Q. I don't care anything about what it was; it was collateral.

By the President:

Q. How did he pay you? A. Cash.

Q. By cash you mean bills? A. Yes, sir.

Mr. Stanchfield.— That is all.

Mr. Hinman.— Nothing further.

The President.— That is all.

Mr. Hinman.— Is Mr. May, Secretary of State, or someone from his office, present? Do you want Mr. Reilly for anything further, Mr. Stanchfield?

Mr. Stanchfield.— No. Here is the representative from the Secretary of State's office.

Mr. Hinman.— Thank you. Take the stand. You have been sworn, have you not, Mr. Adams?

Mr. Adams.— Yes.

HENRY C. ADAMS recalled.

Examination by Mr. Hinman:

Q. Have you produced from the office of the Secretary of State, some documents you were subpœnaed to produce? A. I have.

Mr. Hinman.— I offer in evidence a paper produced here by the witness from the Secretary of State, being the original appointment of John A. Hennessy, as a special commissioner to examine and investigate the management and affairs of the State Commission of Highways, with power to subpœna and enforce the attendance of witnesses, to administer oaths and examine witnesses under oath, and to require the production of any books or papers deemed relevant or material.

Mr. Stanchfield.— What is all this about? Are you offering it in evidence?

Mr. Hinman.— Yes.

Mr. Stanchfield.— I object to it as incompetent and irrelevant.

The President.— I will let it in. The fact of it being a commission, it says so, if that is the authority for it, but of course it gives no right at all. I will let it in.

(The paper was marked Exhibit R-2, and will be found at the end of the day's proceedings.)

The President.— All this evidence is of such —

Mr. Stanchfield.— It is the appointment.

The President.— What I mean is whether the appointment is valid or not, but as to whether there was any power to appoint such a person, why, of course —

Mr. Hinman.— I call the Court's attention to the fact that respondent's Exhibit 2, which has just been marked, states that the appointment is made under chapter 30 of the Laws of 1909, as amended by chapter 646 of the Laws of 1911, and chapter 83 of the Laws of 1912. This paper shows it was filed in the office of the Secretary of State on March 25, 1913, and it is dated March 25, 1913.

I also offer in evidence another document produced by the witness from the office of the Secretary of State, being an original document, or what purports to be an official document from the Governor, reciting the appointment of John A. Hennessy under the paper that has just been introduced in evidence, and enlarging his powers so as to enable him to investigate the management and affairs of any department, board, bureau or commission of the State of New York, and with power to subpœna witnesses and compel their attendance and their evidence.

Mr. Stanchfield.— The Presiding Judge understands, I assume, that Mr. Hennessy has not been even a witness here.

The President.— I don't know that it will amount to anything, but I will take it.

Mr. Hinman.— It is dated July 31, 1913, and was filed in the office of the Secretary of State on August 1, 1913.

Marked Exhibit R-3, and will be found at the end of the day's proceedings.

Mr. Hinman.— That is all, Mr. Adams.

Mr. Kresel.— That is all. No cross-examination.

(Witness excused.)

Mr. Hinman.— John A. Hennessy.

The Clerk.— You do solemnly swear that the evidence which you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer, as Governor of this State, shall be the truth, the whole truth and nothing but the truth, so help you God.

The Witness.— I do.

The Clerk.— What is your full name?

The Witness.— John A. Hennessy.

JOHN A. HENNESSY, a witness called on behalf of the respondent, having been first duly sworn, in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Hinman:

Q. Where do you reside? A. 590 St. Marks avenue, Brooklyn.

Q. Are you the John A. Hennessy named in the appointment made by the Governor in March, 1913, to investigate the Highway Department of the State? A. I am.

Q. Under that appointment, what did you do?

Mr. Brackett.— Objected to as wholly incompetent and immaterial.

The President.— I don't see that that is competent. How is that material?

Mr. Hinman.— This is the ground it is material upon, if your Honor please. In March of this year, Governor Sulzer, which

was within three months after he entered upon the discharge of his duties as Governor, appointed John A. Hennessy, the witness, to investigate the affairs of the Department of Highways of the State of New York. We offer to show, and the purpose is to show by the witness, that under that appointment, and under the provisions of the statute authorizing such appointment, he made an investigation of the conditions in the Highway Department in the State, and of the manner in which the contracts for the construction of State roads had been let and had been performed. That he made such investigation, going back into the year 1912, at the time when the State Highway Commission consisted of three members, of which Duncan W. Peck was one; that that investigation shows frauds and corruption in that department, and in the highway construction; that later, and in July, 1913, the powers of this witness were so enlarged as to enable him to investigate the department of Superintendent of Public Works of the State, of which Duncan W. Peck was the head, and that he made that investigation, and that investigation developed, which was published in the paper, the results of it, that he subpoenaed paymasters and superintendents, and division superintendents before him, to examine them. They refused, one of them, to appear and be examined. That an order was granted for the witness to appear or show cause why he should not be punished for contempt. That was a matter of public notoriety, public knowledge generally, and Duncan W. Peck, when he went upon the stand the other day, knew that an investigation of his department was being made, and frauds were being discovered therein, and that if this respondent remained in office, he must go.

I have stated that we desire to show. It is offered under the second question that your Honors have promulgated to be voted upon here, and that is that the public service of the respondent, as to what he was doing as Governor, and whether or not he was discharging his duties in investigating the different departments of the State and endeavoring to put the departments of the State on an efficient and honest basis.

The President.— As I understand the rule of law, as to the witness Peck, you cannot show anything discrediting the witness, that is that he has committed a crime or anything except

by his own mouth you could. Beyond that you cannot go. Undoubtedly you can show expressions of hostility. That is original evidence. That can be done, but to show this man has committed fraud, no.

Mr. Hinman.— That is not the proposition. The proposition is just this:

The President.— That I don't understand.

Mr. Hinman.— Yes, if I may be permitted. The evidence we claim will tend to show and will show that Duncan W. Peck had an interest in this proceeding here now, and had a motive for testifying in such a way as would eliminate this respondent from office and stop this investigation.

The President.— I don't see how you can go into that. That will involve an entirely collateral issue. It seems to me—of course, the Court has already announced it is disposed to rule very liberally on both sides as to testimony, but there does seem to be some limit, so the Court cannot go beyond that and wholly ignore the rule of the Court. If you can show expressions of hostility or personal hostility to the defendant here, that is original evidence, but anything that discredits the witness generally you are confined to getting out of his own mouth.

Mr. Hinman.— Just one other thought. I haven't made myself quite clear, your Honor, and that is that we seek to show also by that same evidence, that the respondent has made a good Governor and has been discharging the duties of his office faithfully and well.

The President.— I don't think you can go into that.

Mr. Hinman.— I have covered it, then.

Mr. Kresel.— That is all.

Mr. Hinman.— That is all, Mr. Hennessy.

Mr. Brackett.— If the Court please, I am sure the purpose of the offer has already been subserved.

The President.— If you have got it —

Mr. Hinman.— I am still behind the other side in that respect.

The President.— If you feel that you are helpless to remedy it, why say anything?

Mr. Hinman.— Nothing further.

(Witness excused).

The President.— If any member of this Court — because every member has the same power as the presiding judge — desires to question that ruling, he may do so. If they don't, why it will stand.

Mr. Herrick.—The respondent rests.

Mr. Stanchfield.— We have two or three other witnesses to call, in rebuttal.

REBUTTAL.

Webb Floyd, recalled in behalf of the Managers in rebuttal.

Examination by Mr. Kresel:

Q. Mr. Floyd, you are the president of the Mutual Alliance Trust Company? A. Yes, sir.

Q. You know Mr. Sarecky? A. I do.

Q. The gentleman who was a witness here this morning? A. I do.

Q. Do you remember having had a conversation with Mr. Sarecky in the month of October, 1912? A. I do.

Q. And where was that conversation had? A. At our office, 35 Wall street.

Q. Was that conversation with reference to deposits?

Mr. Herrick.— Wait one moment. No leading questions.

Mr. Kresel.— Well, it being rebuttal —

The President.— I think he must call his attention, otherwise he might ask about a conversation that had no relation to this matter.

Mr. Herrick.— Did you notice the question?

The President.— I thought I did.

Mr. Herrick.— This is in rebuttal of Sarecky's testimony?

Mr. Kresel.— It is.

The President.— I think they ought to call attention preliminarily to it.

Mr. Kresel.— That is as I understand the matter.

The President.— You are right, counsel.

Q. Was that conversation with reference to obtaining some authority from Mr. Sulzer for Mr. Sarecky to indorse Sulzer's name on checks which he offered for deposit drawn to Mr. Sulzer?

Mr. Herrick.— One moment. I thought that was a collateral matter, and they are bound by the answers of the witness.

Mr. Kresel.— How is that a collateral matter?

The President.— Why, I am not clear on that. You may ask it.

Q. What do you say, Mr. Floyd, with reference to that? A. It was.

Q. Please state to the Court what that conversation was?

The President.— How is that material more than the fact? It seems to me this ought to be limited.

Mr. Kresel.— I want to bring out what he asked Sarecky to do, and what Sarecky did.

The President.— How is that material, beyond the fact? You have got that fact?

Mr. Kresel.— Sarecky testified he didn't have any such conversation at all.

The President.— And this witness says he did. Now, you have got it.

Mr. Kresel.— Let me just put this one question.

Q. After you had that conversation, did you receive the letter which is marked in evidence Exhibit 29, and which I now show you?

Mr. Herrick.— That is objected to.

The President.— I think he may show that, although I think it may appear to be already in evidence.

Mr. Kresel.— It is already in evidence.

Mr. Herrick.— It is not in evidence; it was after the conversation with this witness. The purpose, I suppose, of putting the question to Sarecky was for the purpose of discrediting him.

The President.— I don't think so.

Mr. Herrick.— Necessarily for that purpose and couldn't be for any other purpose. That being so, they are bound by his answer. It is a collateral matter and they had no business to go further than the witness himself.

The President.— I will sustain the objection. Rest on what you have got.

Mr. Kresel.—Very well. If your Honor please, that is sufficient. That is all, Mr. Floyd.

The President.— Haven't you testified to that before?

The Witness.— No, sir.

The President.— I thought the witness had testified to this before.

The Witness.— Not specifically to this.

Mr. Kresel.— Not specifically to this conversation.

Cross-examination by Mr. Herrick:

Q. Do you know Mr. Cisner? A. Mr. Cisner?

Q. Yes, Mr. Cisner? A. No, I don't know Mr. Cisner.

Q. Do you know more than one clerk that came from Mr. Sulzer's office to make deposits? A. I don't know.

Q. Can you tell the difference between Mr. Sarecky and any other person that came from Sulzer's office? A. I know Mr. Sarecky.

Q. You don't know so as to make any comparison between him and any other person that came from Mr. Sulzer's office? A. I am perfectly familiar with Mr. Sarecky's appearance.

Q. How often have you seen him? A. A number of times.

Q. How often, I have asked you. A number may mean two? A. Why, six.

Q. Six. Is that all you recall? A. I would not swear to more.

Q. Going over a period of what time? A. A number of years.

Q. How many years? A. The times I recall are all within the last — since this account was last opened.

Q. That was when? A. In August, 1910.

Mr. Herrick.— That is all.

By Mr. Kresel:

Q. You have no doubt, have you, that you had that conversation?

The President.— I think you have got that.

Mr. Kresel.—Very well, that is all.

(Witness excused.)

Mr. Kresel.— Mr. Egbert.

The Clerk.—You do solemnly swear that the evidence which you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer, as Governor of this State, shall be the truth, the whole truth and nothing but the truth, so help you God.

The Witness.— I do.

The Clerk.— What is your full name.

The Witness.— George W. Egbert.

GEORGE W. EGBERT, a witness called on behalf of the Managers in rebuttal, having been first duly sworn, in accordance with the foregoing oath, testified as follows:

Direct examination by Mr. Kresel:

Q. Mr. Egbert, are you a deputy in the office of the Superintendent of Banks of the State of New York? A. I am.

Q. And are you at present in charge of the business of the Carnegie Trust Company, which was closed down some time ago? A. Yes, sir.

Q. And have you been in charge of the affairs of that trust company since it was closed? A. I have.

Q. And is it the fact that it was closed some time in January, 1911? A. January, 1911.

Q. Have you in your possession and under your control the books of the Carnegie Trust Company? A. I have.

Q. Have you, at the request of the Managers, made an examination of those books with reference to the account in the Carnegie Trust Company of William Sulzer?

Mr. Herrick.— That is objected to as incompetent, immaterial and not rebuttal.

The President.— How is it material?

Mr. Kresel.— If your Honor will recall, Mr. Melville Fuller testified that in a conversation which he had with the respondent, the respondent told him that the securities which the respondent had brought to Harris & Fuller were the securities of Mrs. Sulzer, and that Mrs. Sulzer had had a loan upon those securities at the Carnegie Trust Company, and that he, the respondent, had been compelled to give notes for that loan, and that that became irksome, and that thereupon he took the securities from the Carnegie Trust Company and took them down to Harris & Fuller. Now, we propose to show that Mrs. Sulzer never had any loan at the Carnegie Trust Company, either upon that collateral or any other collateral.

The President.— Why wasn't that part of your affirmative case. That was your own witness. You had that statement.

Mr. Kresel.— It was brought out on cross, or rather redirect.

The President.— It was brought out by you, as I recollect, that he said he told him that he could not prove it by his books, but the Carnegie Trust Company books might show it.

Mr. Kresel.— Exactly. In addition to Fuller's testimony if your Honor will recall the testimony of the respondent's witness, Mr. Josephthal, wherein again Mrs. Sulzer's name was brought in.

Mr. Hinman.— Not in connection with the Carnegie.

Mr. Kresel.— No. Your Honor will also recall the testimony of Mr. Fuller was given very late in our part of the case, and we really didn't have any opportunity to get this account.

The President.— We have opened the case once for you gentlemen. What was Josephthal's testimony?

Mr. Hinman.— He did not mention the Carnegie in any way, shape or manner; but did mention the loan at Harris & Fuller's which he took up.

The President.— You have got that. You have got the fact. You can argue to the members of the Court. If that will show Mrs. Sulzer's name, why it can be produced. You can argue that.

I think I will sustain the objection.

Mr. Kresel.— Very well, if the President sustains the objection.

The President.— Any new matter that was brought out by the defense you may rebut.

Mr. Kresel.— Mr. Miller.

The Clerk.— You do solemnly swear that the evidence you shall give upon this hearing upon certain articles of impeachment preferred against William Sulzer, as Governor of this State, shall be the truth, the whole truth and nothing but the truth, so help you God?

Mr. Miller— I do.

The Clerk.— What is your name, please.

Mr. Miller.— James C. Miller.

JAMES C. MILLER, a witness called in behalf of the Managers, having been first duly sworn, in accordance with the foregoing oath, takes the stand.

Mr. Kresel.— I want to call the attention and ask your Honor whether this may come under the same ruling. What I propose to show with this witness —

Mr. Herrick.— (Interrupting.) Wait a minute. We object to these propositions what they propose to show.

Mr. Kresel.— Well then, I will go on.

The President.— I think he may show what he proposes to do.

Mr. Kresel.— I desire to show by this witness the state of the account of Mrs. Sulzer in the Fifth Avenue Bank during the campaign of 1912.

Mr. Herrick.— That is objected to as incompetent and immaterial and not rebuttal at all.

The President.— How is this rebuttal?

Mr. Kresel.— I might state to your Honor that it is not and we cannot argue that it is rebuttal.

The President.— Well, then, I think we will stand on the same ruling.

Mr. Kresel.— Very well, that is all. We have nothing else. The Managers rest.

The President.— Now, gentlemen, we are ready for the summing up or the closing argument, to speak accurately.

Senator Wagner.— Mr. President.

The President.— Senator Wagner.

Senator Wagner.— May I suggest that the President get the views of counsel on both sides on the question of summing up and

that then the Court go into private consultation to determine our procedure.

The President.— I think that is a very wise suggestion. That was the intention of the Court, that we find out what the counsel desired, and then we will go into consultation.

Mr. Richards.— Presiding Judge, on behalf of the Managers, what we suggest is this: That two counsel on each side —

The President.— Gentlemen, one of your associates is discussing —

Mr. Richards.— If they are consulting I won't interrupt them.

Mr. Brackett.— While we are waiting may we pass around the photographs of some of the exhibits that have not yet been distributed?

The President.— Yes, you can utilize the time in that way.

Mr. Herrick.— I think, if it please the Court, that five hours for each side will be satisfactory. Then we will determine how that time shall be divided up on each side.

The President.— Is that satisfactory to both sides?

Mr. Richards.— That is satisfactory, yes, sir.

The President.— Well then, practically you want —

Mr. Herrick.— It would mean a day apiece practically.

The President.— Five and a half hours, yes, sir. Now, have you got anything to say about the order?

Mr. Richards.— Naturally I would say our own suggestion had been, we suggested to them that they should open and then one from our side, then a reply, and then a re-reply.

The President.— That is the natural way, if that is satisfactory.

Mr. Herrick.— You say a reply and re-reply. You mean an answer and a reply.

Mr. Richards.— Yes, an answer and a reply.

The President.— Instead of having you make the whole argument at one time, one counsel for the respondent will be heard —

Mr. Herrick.— And will be followed by the counsel for the Managers, and counsel for the Managers and then counsel for the respondent, the ordinary way of summing up a case.

The President.— Now, gentlemen, have you any further suggestions before the Court is cleared.

Judge Werner.— Mr. President, it seems to me that, in view of the very reasonable suggestions of counsel, it will hardly be necessary to go into private session. Everyone within my hearing here has expressed entire satisfaction with the arrangement which counsel have made.

The President.— Is there any dissent from Judge Werner's statement, gentlemen?

Senator Wagner.— May I ask the President when the summing up is to begin, if that has been determined.

The President.— It will begin to-morrow morning.

Mr. Herrick.— It will begin to-morrow morning. There is one thing that occurs to me. I expected Mr. Marshall to be here; he is preparing the summing up. It might be that he would want some extension of time, or if he could not finish summing up, he may want leave to have it printed. I ask to reserve that for him.

The President.— But you will be substantially ready to go on?

Mr. Herrick.— Oh, yes, we will be entirely ready to go on.

The President.— Gentlemen, is that satisfactory? Gentlemen of the Court, if there is no dissent the Court will assume that the suggestion of the counsel is satisfactory to all the members. Is the Presiding Judge correct in that?

(No response.)

The President.—And then of course we will adjourn now until to-morrow morning at 10 o'clock.

Mr. Herrick.— That will be satisfactory.

The President.— Crier, adjourn Court.

The Crier.— Hear ye, hear ye, hear ye, all persons having any further business before this Court of Impeachment held in and for the State of New York may depart hence and appear here to-morrow morning at 10 o'clock, to which time this Court now stands adjourned.

Thereupon, at 4:10 o'clock P. M. an adjournment was taken until Thursday, October 9, 1913, at 10 o'clock A. M.

RESPONDENT'S EXHIBIT R-2.

STATE OF NEW YORK,

Executive Chamber.

To All to Whom These Presents Shall Come, Greeting:

Know Ye, that pursuant to Section 8 of the Executive Law, I have appointed, and by these presents do appoint

JOHN A. HENNESSY

of New York City, as a Special Commissioner to serve without compensation, to examine and investigate the management and affairs of the State Commission of Highways as constituted under Chapter 30 of the Laws of 1909, as amended by Chapter 646 of the Laws of 1911 and Chapter 83 of the Laws of 1912, and the Department of Highways constituted under Chapter 80 of the Laws of 1913, including the office of the former "State Superintendent of Highways" and of the "Commissioner of Highways."

The said John A. Hennessy is hereby empowered to subpoena and enforce the attendance of witnesses; to administer oaths and

examine witnesses under oath and to require the production of any books or papers deemed relevant or material.

And I hereby give and grant unto the said John A. Hennessy, all and singular the powers and authorities which may be given or granted unto a person appointed by me for such purpose under authority of the statute aforesaid.

In Witness Whereof, I have subscribed my name to these presents and caused the Privy Seal of the [SEAL] State to be affixed hereto at the Capitol in the city of Albany this twenty-fifth day of March in the year of our Lord one thousand nine hundred and thirteen.

(Signed) WM. SULZER.

By the Governor:

CHESTER C. PLATT,

Secretary to the Governor.

RESPONDENT'S EXHIBIT 3.

STATE OF NEW YORK.

Executive Chamber.

To All To Whom These Presents Shall Come, Greeting:

Know Ye, that pursuant to Section 8 of the Executive Law, I have appointed and by these presents do appoint

JOHN A. HENNESSY,

of the City of Albany, to examine and investigate the management and affairs of any Department, Board, Bureau or Commission of the State of New York; the said John A. Hennessy is hereby empowered to subpœna and enforce the attendance of witnesses, to administer oaths and examine witnesses under oath, and to require the production of any books or papers deemed relevant or material

And I hereby give and grant unto said John A. Hennessy,

all and regular the powers and authorities which may be given or granted unto a person appointed by me for such purpose under authority of the statute aforesaid.

In Witness Whereof, I have subscribed my name to these presents and caused the Privy Seal of the [SEAL] State to be affixed hereto at the Capitol in the city of Albany this thirty-first day of July in the year of our Lord one thousand nine hundred and thirteen.

(Sgd) WM. SULZER.

By the Governor:

CHESTER C. PLATT,

Secretary to the Governor.

SENATE CHAMBER,

ALBANY, N. Y., *October* 9, 1913.

Pursuant to adjournment the Court convened at 10 o'clock a. m.

PRESENT:

Hon. EDGAR M. CULLEN, Presiding Judge,

and

THE JUDGES OF THE COURT OF APPEALS,

and

THE SENATORS OF THE STATE OF NEW YORK.

APPEARANCES:

THE MANAGERS:

Same as heretofore.

Counsel for the Managers:

Same as heretofore.

Counsel for the Respondent:

Same as heretofore.

The President.— Call the roll, Clerk.

The Clerk thereupon called the roll and found that there was a quorum present with the following absentees:

Senator Fitzgerald.

Judge Gray.

The President.— Open Court, Crier.

The Crier.— Hear ye, hear ye, hear ye all persons having business before this Court of Impeachment held in and for the State of New York, give their attendance and they will be heard.

Mr. Herrick.— Mr. Marshall will open, if the Presiding Judge please.

The President.— Before the address of counsel, there is one piece of evidence here that must be stricken out. That was the Kohler check. It was to have been connected with this defendant, and I do not remember that any such connection was subsequently made, if that was the one that was referred to.

Mr. Herrick.— I didn't know it was in evidence.

Mr. Stanchfield.— The check did not go in evidence, if the Presiding Judge please.

The President.— Then it is unnecessary to strike it out.

Now, Mr. Marshall,— is the letter out, too?

Mr. Herrick.— The letter I supposed was not in.

The President.— That is disposed of then.

Mr. Herrick.— If it is in I move to strike it out.

The President.— If it is in, that and the check will be stricken out.

Mr. Marshall.— May it please the Court. We have now reached the stage in these momentous proceedings when it becomes necessary to review the allegations and the proofs which have been submitted to this tribunal, with a view to determining the guilt or the innocence of the respondent. The responsible duty of presenting the outline of the contentions on behalf of the Governor has been assigned to me. Though never shirking any responsibility that it may become my lot to assume, I nevertheless approach the performance of the present duty, not with false modesty, but with extreme diffidence, and with a full realization of the disparity of my powers and the greatness of the task which has devolved upon me.

We are on the threshold of an event which will make a permanent impression upon the history of our beloved State, which will entail consequences far beyond our ken, which will determine whether or not the reign of law has ceased, and that of passion

and prejudice has begun. While the duty which rests upon counsel cannot be too greatly emphasized that which rests upon this Court is infinitely greater, for while it is given to counsel but to present arguments, it is for the Court to decide, to adjudge, to create a precedent which will inevitably and irrevocably declare the policy of this State with regard to the permanency of its institutions and the independence of those who make up the sum total of its official life.

The picture which is now unfolded before the vision of the civilized world is almost unique in the experience of mankind. The Governor of the greatest State in the Union, with a population of ten million of free men, who was elected less than one year ago by an unprecedented majority, is upon trial, before a Court which is composed of the judges of the Court of Appeals and of the Senators, on an impeachment which charges him with the commission of various acts, which, it is asserted, entitle the complainants to a judgment of forfeiture of that office, and which will place an everlasting stigma upon his name, and upon the honored office to which he was thus triumphantly chosen by the suffrages of his fellow citizens, amid loud acclaim.

Who is this respondent, who has thus been placed, as it were, in the prisoner's dock, against whom there is asked to be pronounced the everlasting doom of infamy and shame, who is sought to be driven out of the office to which he was exalted but a few short months ago, and to be forever deprived of the right to hold public office and to serve the State? It is William Sulzer, who has just passed his fiftieth birthday, which was celebrated by those who stood highest in the civic and political life of the State, with congratulations and rejoicing, an occasion when even some of those who are now serving as impeachment managers, indulged in loud sounding praises of him, and were among the foremost to do him honor.

For more than twenty-five years he has been a prominent figure in the political activities of the State and of the nation. For five years he served in the Legislature of the State. During one year of that period he was the Speaker of the Assembly, when barely thirty years of age. For eighteen years he served in the National Congress, honored and respected, a power for good, chosen to

serve on important committees, where all of his energies were directed to the betterment of human conditions and the improvement of the public service. It was given to him to serve in the last Congress as the chairman of the important Committee on Foreign Affairs, and it is a matter of public history that in that exalted station, he stood in the forefront of those who protected the sanctity and integrity of American citizenship, by bringing about the practically unanimous termination of the treaty between the United States and Russia, solely because of the unjust discrimination which was practised as against American citizens. It was due to his energetic initiative, that the Chinese Republic was recognized by our Government, and that the assertion of human rights in many a land was stimulated and encouraged. He was largely instrumental in keeping open the doors of opportunity to the emigrants from foreign shores. He introduced and brought about the passage of the law which added new dignity to labor by the creation of the Department of Labor, and its representation in the Presidential Cabinet. He was a pioneer in that new field of legislation which has for its purpose the conservation of our natural resources.

He was nominated for Governor in an open convention. During his campaign he visited every corner of the State, and met the constituency which elected him, face to face. Upon his election, he mapped out a broad policy of reform, intended to carry out the platform of his own political party, and the pronounced wishes of the electorate. He found the finances of the State in a scandalous condition. At his instance, a committee of investigators was appointed to examine into the various State Departments, and to suggest improvements. As a result of this action, the Highway Department was entirely reorganized, the Department of Efficiencies and Economies was created, the State Architect, under whose administration abuses had arisen, was removed; the Health Department, the Labor Department, the Prison Department, were all subjected to a complete revision, and a movement was set on foot for the reorganization of the Banking Department as well. The eyes of the people were opened, as they had never been before, to abuses and evils which cried to heaven for correction and redress.

And now William Sulzer, who wrought all this, stands before you to-day, on trial for his very existence, charged with being a common criminal, and for what? Not because while an incumbent of office he has been guilty of official corruption; not because he has taken one dollar of the people's money, or has enriched himself at their expense, or has received a bribe, or has done aught to injure the public weal; not because he has been guilty of treason, of a violation of the Constitution, or of his oath of office; not because he has neglected the performance of his official duties, or has absented himself from the seat of government, or indicated, to the slightest degree, a lack of zeal for the public welfare. It is not charged that he was incompetent or ignorant, or incapable of performing the duties of his office, or that he has not been duly watchful of the interests which he has been sworn to guard. It is not charged that he has entered into a conspiracy with those who would loot the public treasury, or who would batten on contracts improvidently or corruptly drawn without safeguards to forestall adequately the possibility of fraud and collusion. The achievements of his administration, as they have passed before the eyes of the people, absolve him from all suspicion of guilt in regard to any of the offenses contained in the category of the usual form of official misconduct.

And yet the Impeachment Managers are now seeking to remove William Sulzer from the office which he has thus honorably filled, fifteen months before the expiration of the term for which he was elected. If Macaulay's celebrated New Zealander, or Montesquieu's famous Persian were now among us, we well might ask, why, in this land of boasted liberty and freedom one deserving so well at the hands of his fellowmen should be subjected to this awful degradation, and why the State which he has served so well should be involved in his ruin and disgrace. The only answer which could be vouchsafed to them is to be found in the articles of impeachment, which, as the record shows, were adopted at dawn of the fatal 13th day of August, 1913, by the Assembly of the State of New York, in less than thirty-six hours after the presentation of the reports of an investigating committee which the members of the Assembly could not possibly have read or considered when they voted the adoption of these articles.

The case against Governor Sulzer must stand or fall on these charges. Nothing can be added to them. It is beyond the power of the Impeachment Managers as it is of this Court to permit them to be amended or enlarged or altered. If they are insufficient in law or in fact then the respondent must be acquitted. It matters not what the individual impressions of any member of this Court may be with regard to him as a man or as a citizen; it matters not whether his actions as disclosed by the record before us were always characterized by good faith or good judgment, or whether they conformed to the highest standard of ethics or of etiquette — all that goes for naught.

The only proposition which this Court has a right to consider is the respondent's guilt or innocence of the charges set forth in the articles of impeachment which were served upon him — that and that only.

These charges are eight in number. Six of them practically center around a report filed by the respondent in the office of the Secretary of State shortly after the election of 1912. The remainder, the seventh and eighth, relate to other matters and are practically negligible as has been admirably shown in the opening address of Senator Hinman on behalf of the respondent. Because of this report the Impeachment Managers have made the State to reverberate with all the volume of vociferation that would have been directed against a Benedict Arnold or an Aaron Burr, against one guilty of "treasons, stratagems and spoils."

The entire Penal Law has been ransacked for epithets and characterizations. A veritable Newgate calendar has been evolved out of that single act. Article one makes it a violation of the Corrupt Practices Act. The Kaleidoscope is shaken, and article two converts it into a charge of perjury. Article three makes it bribery. Article four, the suppression of evidence in violation of section 814 of the Penal Law. Article fifth, the preventing and dissuading a witness from attending under a subpoena, in violation of section 2441 of the Penal Law. Article six, larceny, in violation of sections 1290 and 1294 of the Penal Law. Certainly the ingenuity of trained prosecutors, provided with microscopical eyes that see bad in everything, and behold everywhere the microbe of crime has been strained to the utmost.

When we further analyze this collocation of offenses, we cannot fail to be impressed by the fact, which has been elaborately presented to this Court at the opening of this trial, that the three fundamental charges, those which have been made the subject of the most minute investigation before this tribunal, and in the consideration of which weeks have now been occupied, relate to acts or transactions all of which occurred and were completed before the respondent entered upon the performance of his duties as Governor, and took his constitutional oath of office. The evidence has not in any way changed the propositions which were discussed at the very opening of this trial. The Court has wisely reserved the determination of the question as to whether those transactions, assuming them to have been established as pleaded and to constitute the offenses characterized in the articles, constitute ground for impeachment. That question must now be decided. Will impeachment lie in this State for acts which do not constitute "willful and corrupt misconduct in office?" We assert the negative. The arguments which we have adduced in support of our contention constitute a part of the record. They have been ably and exhaustively elaborated by my associates, Judge Herrick, Judge Vann and Mr. Fox. I would not presume, therefore, to enlarge on the arguments which they have advanced. Yet, in view of the length of time which has elapsed since they were heard on this subject, it may not be amiss to summarize the argument, in order that the mind of the Court may be refreshed.

It must be a fundamental principle in every system of jurisprudence, especially in so far as it relates to the administration of the Criminal Law, that the law whose infraction is sought to be enforced, must have existed before the pronouncement of judgment, and before the perpetration of the act of commission or omission which is sought to be punished. The lawmaking power must act before the judicial power may pronounce judgment. The legislative and the judicial power cannot coexist under a free government. In days of barbarism, and in those lands where despotism and autocracy prevail, the lawmaker and the judge are frequently one and the same person. Tyranny inevitably follows, human rights are disregarded, those in power hold those subject to their control in virtual slavery, and government is

but the shadow of a name to mask the exercise of arbitrary power. Under such a system, law, reason, authority, mean nothing. Caprice, passion, prejudice, are the incentives to action. One who has fallen into disfavor may be haled before the judicial legislator or the legislative judge, on one charge or another, or upon no charge, and may be convicted from any motive which at the moment may seem sufficient to the legislative tribunal.

Under our system of government, the legislative and the judicial departments are separate and independent, and the Court can only condemn in accordance with pre-existing law. Not only are the courts thus confined and limited in the exercise of their powers, but not even the Legislature can declare that to be a crime which was not so defined at the time of the commission of the act which is sought to be punished. Legislation which offends against this principle is called ex post facto, and has been deservedly condemned as in violation of the first principles of liberty and justice. A tribunal for the trial of impeachments, especially under the enlightened jurisprudence of New York, is a court, a judicial body. This court derives its existence from the Judiciary article of the Constitution. It is entirely stripped of legislative power, even though a majority of its membership consists of legislators. When they became members of this Court, they ceased to be legislators, and became judges, and the oath which they have been required to take in order to qualify them for membership in this Court is one which requires them, not to legislate, not to make law, but to hear, try and determine the impeachment upon which they are to pass judgment, according to the evidence.

This tribunal, therefore, being judicial in its nature, and in no sense of the word legislative, must necessarily move within a certain, defined area. It cannot act without restriction, without limitation, according to its own sweet will — "uncribbed, uncabined, unconfined." To so declare, would place it within the power of the Assembly and of this Court to remove from office arbitrarily any and all public officers of this State — one because he is tall, another because he is short; A because he is a Republican, B because he is a Democrat, and C because he is a Progressive. D may be removed because he belongs to one church, and E because he is a member of another creed. One judge may be

removed from office because he believes in a strict construction of the Constitution, another because he believes in a liberal interpretation. One man may be removed from office because he eats peas with a knife, and another because he uses a fork for that operation.

If unlimited power is once conceded — and our opponents assert the existence of such unlimited power — then government of the people would become a mere by-word and a hissing, because the will of the people as announced at the polls would be promptly set aside by the removal from office of those elected, for any reason, or no reason, whatsoever.

It could never have been contemplated by the people that such tremendous powers should be conferred upon any of the constitutional agencies which they created. The very suggestion of the existence of such a power bears within it the seeds of destruction. The people, by adopting a Constitution giving such power, would have placed a frozen viper in their bosoms.

It being, therefore, inconceivable that such unlimited power of impeachment exists, it is important to determine what limitation has been placed upon this tribunal with respect to the exercise of the power to convict upon an impeachment.

In many of the Constitutions of the various States of the Union, it is expressly provided, that the power to impeach is to be exercised only for misconduct in office. I believe that that expression is to be found in twenty-four of the Constitutions, while in others there are added various other grounds. The Constitutions of New York of 1777 and 1821 specified as grounds for impeachment, originally, "mal and corrupt conduct in office," to which were subsequently added "high crimes and misdemeanors." In 1846 the Constitution was revised, and the language of the former Constitution, in so far as it defined the grounds of impeachment, was dropped. But certainly that could not, when one considers the conditions in those days, have been intended as a bestowal of arbitrary power upon the Court of Impeachment or upon the Assembly. Those who framed the Constitution of 1846 were exceedingly jealous of arbitrary power. They abolished every vestige of such power as it formerly existed. They took away from the Senate the power to sit as a Court of Errors in review

of the decisions of the Supreme Court. The Council of Revision had passed out of existence, and the Convention of 1846 refused to re-create it. The centralization of governmental power was offensive.

Nothing could, therefore, have been farther removed from the minds of the framers of the Constitution of 1846 than the thought that the Court of Impeachment should be unrestricted in its exercise of power. When one but reflects that the Constitution of 1846 was intended to extend the power of the people in the selection of their officials, that it was that Constitution which made the judiciary of this State elective, instead of appointive, as it had previously been, is it possible to believe that the power to remove from office, arbitrarily, those who had been voted into office by the people, could have been considered with any degree of equanimity?

An yet, according to the contention of our opponents, if the people had, in 1847, voted into office thirty-two judges of the Supreme Court, at the very next session of the Legislature the Assembly might have impeached all of them on political grounds, and the Court of Impeachment could have sustained the charges, either on the grounds presented, or for any reason which it might have deemed sufficient; either that the judges were too young or too old, that they were college graduates, or that they had never attended at a college. The very suggestion comes to one with a shock.

It is evident, however, from the legislative history of this State, which gave a practical interpretation to the Constitution, that it was always believed that it was within the power of the Legislature, by a law enacted before the fact, and not after the fact, to define the jurisdiction of the Court of Impeachment, and the ground on which a public officer might be impeached. There have been on the statute book, almost from the very adoption of the Constitution of 1777, statutes regulating the Court of Impeachment and its proceedings, and defining the powers of the Court, following the language of the Constitution in respect to such definition, so long as that instrument undertook to define the powers of the Court. Immediately after the adoption of the Constitution of 1846, when the criminal law of this State was sought

to be codified, it was proposed to change the statute law with regard to the subject of impeachment, by limiting the jurisdiction of the Court for the Trial of Impeachments to cases of wilful and corrupt misconduct in office. This Code was not enacted until 1881, and ever since, during the past thirty-two years, section 12 of the Code of Criminal Procedure has defined the jurisdiction of this Court, "to try impeachments presented by the Assembly * * * for wilful and corrupt misconduct in office."

This statute was in force in 1894, when the last Constitutional Convention sat. The framers of the Judiciary Article contained in that Constitution, as well as the members of the Constitutional Commission of 1891, were familiar with this legislation, and when they re-enacted, with one change only, the provision of the Constitution of 1846 which related to the Court for the Trial of Impeachments, they necessarily adopted that section, with the legislative interpretation which had been given to it. This, as has been argued here by Judge Parker with respect to another point, was in accordance with the well recognized rule which has been applied over and over again in the interpretation of constitutional provisions, just as a similar principle has been applied when a provision contained in the Constitution or a statute of another State is enacted. The language of such adopted provision is to be read in conjunction with the decisions and statutes which have interpreted it.

In his argument, Judge Herrick has presented another reason in support of this contention, in a narration of what occurred subsequent to the adoption of the Constitution of 1894 with respect to the amendment of the Code of Civil Procedure and of the Code of Criminal Procedure, so as to conform them to the new Constitution. Inasmuch as that argument is somewhat personal to myself, I will refrain from commenting upon it, further than to say that, under the decisions of the Court of Appeals to which Judge Herrick referred, the force of our contention is greatly accentuated.

There is, therefore, an overwhelming argument in favor of the practical interpretation that has been given to the Constitution, in respect to the definition of the jurisdiction of this Honorable Court.

In People ex rel. Einsfeld v. Murray, 149 N. Y., such a practical interpretation was held to be of the most conclusive character, even with regard to a provision in the Constitution, which, in its terms, seem to be explicit as a prohibition against the legislation which was nevertheless decided to be constitutional.

Not only has there been this legislative definition of the jurisdiction of this Court, but the limitation upon the right of impeachment as referring to official misconduct, has been in practice recognized. The Assembly of 1853 made an explicit declaration to that effect. No public officer has ever been impeached in this State except for wilful and corrupt misconduct in office. I am not unmindful of the Guden case. That was not one of impeachment, and, as has been shown in the arguments heretofore presented on behalf of the respondent, that case, far from being an authority against us, strongly supports our position.

Moreover, the history of impeachment, not only in this country but also in England, unmistakably shows that, for more than three centuries, there has not been a case of impeachment which was not grounded on official misconduct.

At page 588 of Foster on the Constitution, the author says:

> "An examination of the English precedents will show that although private citizens as well as public officers have been impeached, no article has been presented or sustained which did not charge either misconduct in office or some offense which was injurious to the welfare of the State at large."

In a note he cites some 48 cases of impeachment, and every one of them is of the character indicated in the text.

The counsel for the impeachment managers, with commendable industry, collated in their brief every case of impeachment of Federal and State officials which is to be found in the annals of this country. They are some 71 in number. In every single instance the impeachment was for misconduct in office. This is the first time, in 135 years of American constitutional history, when the attempt has been made to impeach any public officer for any cause other than misconduct in office.

Is the impeachment of William Sulzer to usher in a new era in this country? Is a new precedent to be established, in order that he may be removed from the office to which he was elected, without regard to official misconduct on his part? If that can be done in the present instance, then as well said by Judge Vann, whom all of us love and revere, this Court could convict the Governor of the State and remove him from office because he stole cherries when a boy or spat on the sidewalk when a man.

The power to impeach was never intended to apply to any action or to any crimes other than those constituting official misconduct. The ordinary courts are provided with ample machinery to deal with crimes which are not acts of official misconduct, or which were committed by one not in office at the time of their perpetration. It could never have been contemplated that this court, with its large membership and unwieldly structure, should be convened for the purpose of trying charges which do not constitute official misconduct. The expense of maintaining such a tribunal is enormous. The inconvenience to the members of the Court cannot easily be calculated. There is no necessity, nor is there any reason for converting this Court into one for the trial of ordinary crimes. The Supreme Court, the County Courts, the Courts of General Sessions, are better adapted for their trial, and it must have been contemplated by the framers of the Constitution, that trials of such questions as those which pertain to non-official action should come in the usual course before the regular tribunals designed therefor.

Our opponents are necessarily driven to the proposition that section 12 of the Code of Criminal Procedure is unconstitutional, and this in spite of the fact that there is not to be found in the judiciary articles any language which prohibits the Legislature from the exercise of the power to define the jurisdiction of this Court. The absence of such a prohibition is fatal to the argument, for it is well settled that if there is no constitutional prohibition or limitation upon the exercise of the power, the power to legislate is plenary.

We therefore urge, with all the force we can command, that articles I, II and VI, which confessedly do not relate to misconduct in office, should not be considered by this Court, because they lie beyond its jurisdiction.

The Court having, however, reserved the determination of its right to act upon these articles until the final vote is taken upon the articles as an entirety, it becomes necessary to discuss these, together with all of the other articles, with a view to determining whether, on the assumption that the Court shall declare section 12 of the Code of Criminal Procedure unconstitutional, a case is made out against the respondent in law and in fact, upon any of the eight articles which he has been called upon to meet.

It will aid us in the consideration of this phase of the discussion to regard generally the nature of these proceedings and the rule of procedure applicable thereto. We begin with the proposition, that this is a criminal proceeding and is governed by the special doctrines applicable to criminal trials, as distinguished from the trials of civil actions. An unbroken line of precedents so declares. I doubt whether it has ever been suggested by any respectable authority that an impeachment proceeding is any other than a criminal proceeding. The articles of impeachment have been likened to an indictment. They cannot be amended except by the body which impeaches. The proceedings are highly penal. They involve a forfeiture.

Article VI, Sec. 13 of the Constitution, provides for the acquittal or conviction of the person proceeded against. These are terms peculiar to the criminal law. The judgment which is to be pronounced is not only judgment of removal from office, but also disqualification from holding or enjoying any office of honor, trust, or profit under the State. In the Bill of Rights, it is spoken of in juxtaposition with the obligation to answer "for a capital or otherwise infamous crime;" and in Article IV, Sec. 6, it is spoken of in its relation to the granting of reprieves, commutations and pardons after conviction, and is treated as an offence in the phrase: "for all offences except treason and cases of impeachment."

So important is it in the present case to fully understand the nature of such a proceeding, and the rules specially applicable thereto, that I would consider myself as neglectful of my duty to the Court if I did not in some detail discuss the authorities bearing upon the subject.

This proceeding being one for impeachment, it is to be governed by the general rules applicable to other criminal prosecutions:

Commonwealth v. Thompson, 13 B. Mon. (Ky.) 159.
People ex rel. Miller v. Wuerster, 91 Hun 233.
People v. Police Commissioners, 13 App. Div. 69, 70.

This proposition is admirably stated by Webster in his famous defence of Judge Prescott, where he said, Vol. X, Writings and Speeches of Daniel Webster, Little, Brown & Company Edition, p. 245:

> "I take it to be clear that an impeachment is a prosecution for a violation of existing laws; and that the offence, in cases of impeachment, must be set forth substantially in the same manner as in indictments. I say substantially, for there may be in indictments certain technical requisitions, which are not necessary to be regarded in impeachments. * * * An impeachment, it is well known, is a judicial proceeding. It is a trial, and conviction in that trial is to be followed by forfeiture and punishment. Hence the authorities instruct us that the rules of proceedings are substantially the same as prevail in other criminal proceedings."

Citing: 2 Wooddeson, 611; 4 Bl. Comm. 259; 1 Chitty's Criminal Law, 169; 1 Hetsell's P. C. 150.

At page 249 he continued:

> "I beg leave to ask, sir, of the learned Managers, whether they will, as lawyers, express an opinion before this Court that this mode of accusation is sufficient? Do they find any precedent for it, or any principle to warrant it? If they mean to say, that proceedings in cases of impeachment are not subject to rule, that the general principles applicable to other criminal proceedings do not apply; that this is an intelligible, though it may be an alarming course of argument. If, on the other hand, they admit that a prosecution by impeachment is to be governed by the general rules applicable to other criminal prosecutions; that the Constitution is to control it; and

that it is a judicial proceeding; and if they recur, as they have already frequently done, to the law relative to indictments for doctrines and maxims applicable to this proceeding; I again ask them, and I hope in their reply they will not evade an answer, will they, as lawyers, before a tribunal constituted as this, say that, in their opinion, this mode of charging the respondent is constitutional and legal?"

In the argument of William Wirt on the impeachment trial of Judge Peck, that great lawyer said:

"The respondent has answered, denying the charge in both its aspects, of an unlawful act and a guilty intention. The burden is on the Managers to make good the charge, both as to the illegality of the act, and the guilt of the intention. It is not enough for them to prove that the act was unlawful (though this I apprehend is far beyond their power), but they must go further and prove that this unlawful act was done with a guilty intention. Even if the judge were proven to have mistaken the law, that would not warrant a conviction, unless the guilt of intention be also established; for a mere mistake of the law is no crime or misdemeanor in a judge; it is the intention that is the essence of every crime. The maxim is (for the principle is so universally admitted that it has grown into a maxim) *actus non facit reum nisi mens sit rea* * * *. Now, if the respondent thought that he was acting lawfully, and so acted with the intention to discharge what he conceived to be his duty as a judge, he cannot be guilty of this charge; for he could not have taken this step with the intention wrongfully and unjustly to oppress and injure Mr. Lawless under color of law. * * * Now, sir, this proposition the honorable Managers are bound to establish, in both its terms, by the evidence in the case. It will not be enough for them to excite a suspicion, to raise a doubt upon the subject — to leave the minds of the honorable Court in equilibria; they must cast the balance distinctly, remove every reasonable doubt, and place the illegality of the act, and the guilt of the purpose, beyond question, before they can expect from his honorable Court a sentence of guilty." (Trial of Judge Peck.)

This doctrine was recognized by John C. Spencer, one of the great jurists of this State, who was one of the Managers, for the House, on the trial of Judge Peck, for he said (proceedings of trial, p. 290):

> "It is necessary to a right understanding of the impeachment, to ascertain and define what offences constitute judicial misdemeanors. A judicial misdemeanor consists, in my opinion, in doing an illegal act *colore officii* with bad motives, or in doing an act within the competency of the court or judge in some cases, but unwarranted in a particular case from the facts existing in that case with bad motives. To illustrate the last proposition, the eighth Article of the Amendments of the Constitution forbids the requirement of excessive bail, the imposition of excessive fines, or the infliction of cruel and unusual punishments. If a judge should disregard these provisions, and from bad motives, violate them, his offence would consist, not in the want of power, but in the manner of his executing the authority entrusted to him, and for exceeding a just and lawful discretion."

On the trial of George G. Barnard (Vol. III, p. 2070), when the court had under consideration the article of impeachment in which it was charged that James Fiske, Jr., and Jay Gould, had presented the sum of $1,000 to a child of the respondent, and on another occasion had presented to him a number of costly chairs of the value of $500, and upwards, although the facts as charged were established by evidence, sufficient for the purpose of a civil action, a majority of the court of impeachment voted not guilty, including Chief Judge Church, and Judges Allen, Peckham, Folger, Andrews, and Rapallo; Chief Judge Church saying:

> "* * * And as to the chairs I think the evidence in the case,— the conflicting evidence which has been produced here — is sufficient to create a doubt whether the chairs were not in fact paid for. If I felt warranted in balancing the evidence, and in determining that question in a single action, I might come to the conclusion that the evidence of payment was not reliable; but we are here in a criminal case, where

the respondent is entitled to the benefit of every reasonable doubt, both upon the facts and the law, and I cannot say that the evidence which has been produced is not sufficient to create some doubt as to whether the chairs were not paid for."

Judge Andrews said, p. 2071:

"* * * but I arose simply to say that I shall vote not guilty upon this article, upon the principle that this defendant is entitled to every reasonable doubt, and that that doubt as to his guilt, according to the charge, exists in my mind upon the evidence in the case."

Judge Allen said, p. 2072:

"In respect to the chairs, while I concur with the Chief Judge that perhaps upon the trial of an issue in a civil action where it was necessary to determine the fact one way or the other I could bring my mind to a definite conclusion, yet there is probably in the conflict and uncertainty of the evidence enough of doubt upon the question whether the chairs were in fact a gift to require us to give to Judge Barnard the benefit of that doubt in the form of an acquittal."

In the proceedings for the removal of District Attorney Jerome, which resulted in a dismissal of the petition — and we had the pleasure of seeing him here in Court at the table of the counsel for the impeachment managers contemporaneously with the hearing of the testimony of the witness Allan A. Ryan — Governor Hughes said:

"A public officer is entitled to the same presumption in his favor as those which in accordance with the spirit of our authorities are raised in favor of any other person accused of wrongdoing. The fact that he is a public officer does not deprive him of the right to be considered innocent by fair-minded people until he is proved guilty, and to be free from the imputation of bad faith, or improper motive, until the evidence of it is clearly shown."

In State v. Hastings, 37 Neb. 96; s. c. 55 N. W. Rep. 774, which was also an impeachment proceeding, the Court said:

> "It may be safely asserted that the decided weight of authority in this country and in England, if indeed, there exists a diversity of opinion on the subject, is that impeachment in that respect must be classed as a criminal prosecution, in which the State is required to establish the essential elements of the charge beyond a reasonable doubt."

The passages from the opinion in the Barnard case, just referred to, were quoted approvingly, as well as the opinions expressed by various Senators on the impeachment of Belknap, as Secretary of War, which were to the same effect.

See also State v. Buckley, 54 Ala. 599; State v. Robinson, 1 Ala. 482; s. c. 20 So. Rep. 30; Kilburn v. Law, 111 Cal. —; s. c. 43 Pac. Rep. 615.

In State v. Hastings, 55 N. W. 774 (37 Nebraska, 96) impeachment proceedings were brought against George B. Hastings, Attorney-General, John C. Allen, Secretary of State, and Augustus R. Humphrey, Commissioner.

Judge Post, in discussing the nature of the proceeding, said, at page 781:

> "Another question which is suggested in this connection is the character of this proceeding, viz.: whether it is to be regarded as a civil action or as a criminal prosecution for the purpose of the production and the quantum of proof to warrant a conviction. It may be safely asserted that the decided weight of authority in this country and in England, if indeed, there exists a diversity of opinion on the subject, is that impeachment in that respect must be classed as a criminal prosecution, in which the State is required to establish the essential elements of the charge beyond a reasonable doubt. Blackstone (4 Comm. 259) thus defines the proceeding: 'But an impeachment before the Lords by the Commons of Great Britain in Parliament is a prosecution of the already known and established law, and has been frequently put in practice, being a presentment to the most high and

supreme court of criminal jurisdiction by the most solemn grand interests of the whole Kingdom.' In the impeachment of Belknap Senator Wright used the following language: 'Because it does not satisfy me upon this point beyond a reasonable doubt, and because it is quite wanting in everything like directness and force * * * I feel bound to vote 'Not guilty.'" Language of similar import was used by Senators Christiancy, Booth, Oglesby, and others. But we are fortunately not without judicial authority on the subject. In the impeachment of Barnard (1872) the judges of the Court of Appeals of New York sat with the Senators, and appear to have been consulted upon all doubtful questions. Chief Justice Church (page 2070), speaking upon the subject under consideration said: 'If I felt warranted in balancing the evidence, and in determining that question in a single action, I might come to the conclusion that the evidence of payment was not reliable; but we are here in a criminal case, where the respondent is entitled to the benefit of every reasonable doubt, both upon the facts and the law, and I cannot say that the evidence which has been produced is not sufficient to create some doubt.' Judge Andrews (p. 2071) said: 'I shall vote 'Not guilty' upon this article, upon the principle that this defendant is entitled to every reasonable doubt, and that that doubt as to his guilt, according to the charge, exists in my mind upon the evidence in the case.' Like views were expressed by other judges, but there was no dissent from the opinions above quoted; and in State v. Buckley, 54 Ala. 599, impeachment is defined as a criminal proceeding without the right of trial by jury. It is not alone in form but also in substance, a criminal prosecution. As said by Senator Sargent in Belknap's case (p. 87): 'A sentence of disqualification is a humiliating badge fixed to high crimes and misdemeanors in office.' While we have in this country no technical attainder working a corruption of blood, the sentence of disqualification to hold or enjoy any office of honor, profit, or trust which is provided by our constitution in case of conviction by impeachment, is within the primary definition of the term. It is the extinction of

> civil rights and capacities, a mark of infamy by means of which the offender becomes attinctus or blackened. Bal. & Law Dic. Tit. 'Attainder'; 1 Bish. Crim. Law, 966, 970, and notes. The allegation that the respondents acted wilfully and corruptly being without support, it follows that there is a failure of proof with respect to specification No. 3."

In State ex rel. Attorney-General v. Buckley, 54 Ala. 599, an information was filed by the Attorney-General against Charles W. Buckley, Judge of the Probate Court, praying his impeachment and removal from office under the provisions of "An Act to provide for the impeachment and removal from office of officers mentioned in Section 2 and Section — of Article VII, of the Constitution of Alabama," approved March 7, 1876. Stone, J., p. 617, said:

> "Impeachment, like most of our proceedings, civil and criminal, came to us from English jurisprudence. In England it was regarded and treated as the highest form of criminal prosecution. There, on conviction, the severest penalties of the law could be inflicted. See Parliamentary History of England, vol. 26, 1218, *et seq.;* 4 Black. Com., 259; 2 Hale Pleas of Cro., 150; Comyn's Dig. Title Parliament L.
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> "Under the Constitution of Alabama, article 7, section 4, penalties in cases of impeachment 'shall not extend beyond removal from office, and disqualification from holding office under the authority of this State, for the term for which he (the officer impeached) was elected or appointed.'"

The Constitution of the United States, article 1, section 3, subdivision 7, contains precisely the same limitations on the measure of punishment in impeachment as that found in our Constitution, save that the disqualification to hold office may, under it, be extended during the life of the offender.

Mr. Story, in his Commentaries on the Constitution, section 688, after stating that in England "articles of impeachment are a kind of bill of indictment, found by the commons, and tried by the lords," adds: "In the Constitution of the United States,

the house of representatives exercises the functions of the house of commons, in regard to impeachment; and the senate, for the functions of the house of lords, in relation to the trial of the party accused. The principles of the common law, so far as the jurisdiction is to be exercised, are deemed of primary obligation and government. The object of prosecutions of this sort in both countries, is to reach high and potent offenders, such as might be presumed to escape punishment in the ordinary tribunals, either from their own extraordinary influence, or from the imperfect organization and powers of those tribunals. These prosecutions are, therefore, conducted by the representatives of the nation, in their public capacity, in the face of the nation, and upon a responsibility which is at once felt and reverenced by the whole community. The notoriety of the proceedings, the solemn manner in which they are conducted, the deep extent to which they affect the reputations of the accused, the ignominy of a conviction which is to be known through all time, and the glory of an acquittal which ascertains and confirms innocence — these are all calculated to produce a vivid and lasting interest in the public mind, and to give to such prosecutions, when necessary, a vast importance, both as a check to crime and an incitement to virtue."

The same author, in section 798, says: "It is the boast of English jurisprudence, and without it the power of impeachment would be an intolerable grievance, that in trials by impeachment the law differs not in essentials from criminal prosecutions before inferior courts. The same rules of evidence, the same legal notions of crimes and punishments prevail." See, also, sections 759, 764, 781; 1 Bish. Cr. Law, sec. 915 (362); 9 Appleton's Amer. Cyclopædia, 197; 4 Kent Com. (marg.) 289; Bouv. Law Dic. "Impeachment."

The authorities above hold that removal from office and disqualification to hold office are criminal punishment. But the doctrine has been carried much farther.

In *ex parte* Garland, 4 Wal. 333, it was shown that Mr. Garland had, before the war, been licensed to practice law in the Federal courts. Having subsequently participated on the side of the Confederates in the war between the sections of the Union,

the question was whether he should be allowed to practice his profession, without taking the oath prescribed by the act of Congress of January 24, 1865. That act declared that "no person shall be admitted as an attorney and counsellor to the bar of the supreme court, or to the bar of any circuit or district court of the United States," etc., "or be allowed to appear and be heard by virtue of any previous admission," etc., "unless he shall have first taken and subscribed the oath," * * * "that he has never voluntarily borne arms against the United States since he has been a citizen thereof; that he has voluntarily given no aid, countenance, counsel or encouragement to persons engaged in armed hostility thereto," etc. It was ruled by the court that "to take away the right to practice law, guaranteed to Mr. Garland by his license previously obtained, was punishment for past conduct; that it imposed a punishment for some of the acts specified, which were not punishable at the time they were committed, and to others of the acts it adds a new punishment to that before prescribed, and it is thus within the inhibition of the Constitution against the passage of an *ex post facto law.*" The only punishment which the act imposed, was a deprivation of the right to practice law in the United States Courts.

To the same effect as was the case above, and for the same reasons, are the cases of *Cummings* v. *State of Missouri,* 4 Wal. 277; *Ex parte Wm. Law,* 35 Geo. Rep. 303; *Impeachment of Andrew Johnson;* Rev. Code, sec. 3755; *Ex parte Dorsey,* 7 Por. 293. The case last cited was decided by this Court near forty years ago, and has never been overturned. In his opinion, Mr. Justice Goldthwaite says: "I have omitted any argument to show that disqualification from office, or from the pursuits of a lawful avocation is a punishment; that it is so, is too evident to require any illustration; indeed, it may be questioned whether any ingenuity could devise any penalty which would operate more forcibly on society." Mr. Justice Ormond concurred with him in the opinion that the statute they were construing, whose only penalty was disqualification to hold office, or to practice law, was "highly penal."

We feel constrained to hold that impeachment, under our Constitution, is a criminal prosecution."

In Professor Theodore W. Dwight's Article in 6 Am. Law Reg., p. 257, in speaking of the nature of the proceeding of impeachment on p. 261, said:

> "The effect of an impeachment, like that of an indictment, is simply that there is apparent reason to believe that there has been a criminal violation of the laws by the individual impeached. He may in proper cases be arrested and held in custody or required to give security. The law still presumes his innocence and can do no more than to take such steps as may be necessary to render his attendance at the trial certain. The trial must be conducted in accordance with the rules of evidence observed in the ordinary courts; the person impeached can only be convicted of a crime known to the law, the punishment follows that attached to the same crime by the ordinary courts. Forfeiture of rights can only occur after conviction. Impeachments, like indictments, are methods of procedure in criminal cases and nothing more."

In State ex rel. Attorney-General v. Tally, 102 Ala. 25, 15 Southern 722:

Impeachment proceedings were brought to remove respondent from office for misdemeanors in office.

McClellan, J., said, at p. 35:

> "Without discussing at present other objections to testimony which may be ruled upon in the course of this opinion, we will proceed to state and consider the evidence with reference to the guilt or innocence of the respondent of the charges brought against him by the information, premising that we recognize the rule of conviction beyond a reasonable doubt as applicable to this case, and that our minds must be convinced to that degree of the guilt of the respondent before we can adjudge him guilty as charged."

In State v. O'Driscoll, 3 Brev. (s. c.) 526.

Impeachment proceedings before the Senate.

Brevard, J., said, at p. 528:

> "Besides, so far from considering the trial by impeachment as oppressive, it appears to me a great constitutional

privilege, an honorable distinction in favor of distinguished citizens, invested with civil employments, and places of public trust and emolument, by the choice or appointment of the people or their public functionaries; and the rights of the accused on such trials are cautiously guarded and greatly favored. The House of Representatives have the sole power of impeaching, and the Senate the sole power of judging. A concurrence of two-thirds of the first branch of the Legislature is necessary to an impeachment; and a like concurrence of the members present of the Senate is necessary to convict; and the Senate may be considered as a select grand jury, men of experience and tried wisdom, and of the first respectability in the State, acting under the solemn sanction of an oath or affirmation, as in the usual course of criminal proceedings of courts of justice."

Bearing in mind, then, the doctrine which has just been illustrated, and treating this case as a criminal proceeding, governed by all of the rules which the humane policy underlying our criminal jurisprudence prescribes, we come to the analyses of the several articles in their general legal aspects, along broad lines, as distinguished from a minute examination into the evidence bearing on the several charges, which, if necessary, will become the subject of later discussion and consideration. For convenience of treatment, we shall take up Articles I, II and VI, those to which the Impeachment Managers have principally addressed themselves, and which, as is evident, have been considered by them the very backbone of the skeleton which they have sought to clothe with the flesh and blood of an avenging Nemesis.

Article I is confessedly an attempt to charge a violation of those sections of the Election Law known as the Corrupt Practices Act. Briefly stated, it is charged that the respondent was required by the statute in force on November 12, 1912, to file in the office of the Secretary of State, within twenty days after his election, a statement setting forth all the receipts, expenditures, disbursements and liabilities made or incurred by him as a candidate for Governor at said general election, which statement, it is claimed, "the statute required to include the amount re-

ceived, the name of the person or committee from whom received, the date of its receipt, the amount of every expenditure or disbursement exceeding five dollars, the name of the person or committee to whom it was made and the date thereof, and all contributions made by him." It is then stated that he filed in the office of the Secretary of State what purported to be such a statement, which showed receipts from sixty-eight contributors aggregating $5,460, and ten items of expenditure aggregating $7,724.09, the detailed items of which were fully set forth in said statement so filed as aforesaid.

It is then alleged that said statement thus made and filed " was false and was intended by him (the respondent) to be false and an evasion and violation of the statutes of the state, and the same was made and filed by him wilfully, knowingly and corruptly," it being false in the particulars that it did not contain the contributions that had been received by him and which should have been set forth in the statement, from various individuals named, and that in making and filing such false statement he did not act as required by law, but in express violation of the statutes of the State.

It is not alleged or pretended that this act constituted a felony, or a misdemeanor, or a crime of any kind whatsoever. It is not pretended that the account was not in all respects accurate, in so far as it related to the expenditures made by the respondent. Nor is it pretended that the report did fully state all contributions made by him. The sole allegation and the only contention that has been made, and which the respondent was called to meet, is, that the statement filed by him did not state all of the contributions received by him.

The first question, therefore, that arises under this article is, whether or not, under the statute, construed as a penal statute should be construed, the respondent was under any legal duty to make a full statement of the contributions received by him from others, as distinguished from contributions made by him and the moneys expended by him in connection with his election.

Although this subject has, to some extent, been discussed at an earlier stage of this trial, it is nevertheless believed to be of such pith and moment that it is proper to make a further and closer

examination into the statutes relating to the reports required to be made by candidates for office.

Proceeding in chronological order, it is important first to consider what is now section 776 of the Penal Law, but what originally was section 41-w of the Penal Code, enacted by Laws of 1892, ch. 693, sec. 1, which, as will presently appear, was amended in one particular by chapter 439 of the Laws of 1910, and re-enacted so as to go into effect on September 1, 1910. That section, so far as material, reads as follows:

> "Every candidate who is voted for at any public election held within this State shall, within ten days after such election, file as hereinafter provided an itemized statement showing in detail all moneys contributed or expended by him directly or indirectly, by himself or through any other person, in aid of his election. Such statement shall give the names of the various persons who receive such moneys, the specific nature of each item, and the purpose for which it was expended or contributed. There shall be attached to such statement an affidavit subscribed and sworn to by such candidate, setting forth in substance that the statement thus made is in all respects true, and that the same is a full and detailed statement of all moneys so contributed or expended by him, directly or indirectly, by himself or through any other person, in aid of his election. Candidates for offices to be filled by the electors of the entire State, or any division or district thereof, greater than a county, shall file their statements in the office of the Secretary of State. * * * Any candidate for office who refuses or neglects to file a statement as prescribed in this section shall be guilty of a misdemeanor."

As originally enacted, the last clause of this section ended with the phrase, "and shall also forfeit his office." This latter clause was stricken out by the amendment of 1910, to which reference has just been made, it having been held in Stryker v. Churchill, 39 Miscellaneous Reports, 578, that such a forfeiture clause as applicable to an elected candidate is unconstitutional, in that it imposes an official test other than that prescribed by section 1 of article XIII of the Constitution, which declared that no other oath,

declaration or test, save that therein set forth, shall be required as a qualification for any office of public trust.

This section referred to a statement by the candidate. It related to two subjects only, the moneys contributed by the candidate and the money expended by the candidate, directly or indirectly, whether by himself or through any other person. This idea is expressed three times in this comparatively short section. It had reference only to contributions and expenditures by the candidate, and not contributions made to him.

It would be impossible to construe it as having reference to contributions made to the candidate. That would be doing violence to the entire structure of the sentence. The idea which was then in the mind of the lawmakers was, to deal solely with the acts of a candidate, and not with the acts of anybody else. There had been serious complaint with regard to large contributions made by candidates to political parties, or otherwise, for the purpose of accomplishing their election. It was claimed that men of small means would be prevented from running for office, because of the necessity of making a large contribution and spending large sums of money.

Throughout this section, therefore, the idea is expressed over and over again, that it is the candidate's contribution and the candidate's expenses as to which information is required. The statement makes it necessary to give the names of the various persons who received the moneys, the specific nature of each item, and the purpose for which it was expended or contributed. Nothing is said as to the names of persons from whom money is received. It is therefore evident that the framers of this legislation, having in mind merely a single contributor, the candidate, did not consider it necessary to add the futile statement requiring the giving of the name of the only contributor whom they had in mind, and, therefore, necessarily contented themselves with calling for the names of the persons who received the moneys which were contributed or expended.

This idea becomes even more clear when one reads section 779, which prohibits any person from soliciting money from a candidate for an elective office, and section 780, which declares that no candidate for a judicial office shall directly or indirectly make any contribution of money or other thing of value, nor shall any con-

tribution be solicited of him. This indicates beyond the peradventure of a doubt that what the legislature had in mind was simply a subject of contributions by candidates for office. It did not assume to deal with contributions made to them.

That this is the keynote of this entire legislation is further indicated by section 781, which limits the amount which may be expended by candidates. Thus, a candidate for Governor is restricted to the expenditure of the sum of $10,000. It is very evident that this could not have been intended to refer to expenditures made by any other person in connection with an election for Governor, because it would be utterly impossible to conduct an election for Governor if the sum total which might be expended for or on behalf of such a candidate were limited to $10,000. The expenses of conducting public meetings, of travel, and for other legitimate purposes, under the most favorable conditions, would largely exceed that sum.

Hence there is no room for doubt that section 776 could have had no other object than to refer to the contributions made by a candidate, and not to such contributions as might be made to him or for him, by third parties.

This act, being a penal act, must be governed by the general rules of construction applicable to such acts. Nothing is to be read into it, but it should be construed with strictness, especially since the requirements which it contains are purely the creation of statute; nothing is to be implied, the language is to be read in its natural sense, and words which will not be found in the statute are not to be supplied in order to create, by construction, a duty which is not specified in the legislative enactment, in order that a penalty may be visited upon him who fails to comply with the duty thus artificially added to the terms of the statute.

This would be the first time in the history of penal legislation when, by a liberal construction, that would be converted into a crime which, according to the plain reading of the statute, is not so intended to be made, and when, by the strict though not unreasonable construction, to which we are entitled, there could not by any possibility be spelled out an intention to create the duty or the crime resulting from a breach of such interpolated duty.

This brings us to a consideration of Article 20 of the Election Law, relating to corrupt practices. As has been said in the course of the discussion, this statute is exceedingly inartificial, blind and confusing. It found its way into our legislation by chapter 502 of the Laws of 1906. Sections 541, 542 and 546 were subsequently amended by chapter 596 of the Laws of 1907. Section 776 of the Penal Law, having been re-enacted in 1910, it is evident that the latter act is still in force, and if there is any inconsistency between it and the Corrupt Practices Article, it must be deemed to control.

The evident purpose of this article was, to require reports to be made, not only by a candidate, under Section 776 of the Penal Law, but also by political committees, and with respect to the latter the requirements extended beyond those which a candidate was required to observe under Section 776 of the Penal Law.

The Corrupt Practices Act consists of twenty-one sections, numbered 540 to 560, both inclusive. By Section 540 a political committee is defined. Section 541 relates to a statement of campaign payments not made through a political committee. That section reads as follows:

> "Any person, including a candidate, who to promote the success or defeat of a political party, or to aid or influence the election or defeat of a candidate or candidates for public office * * * shall give, pay, expend or contribute, any money or other valuable thing except to the chairman, treasurer or a member of a political committee, or to an agent duly authorized thereto in writing by such committee, or to a candidate or an agent of such candidate authorized by the candidate thereto in writing, or except for personal expenses as hereinafter provided, shall file the statement required by section five hundred and forty-six, and shall be subject to all the duties by this chapter required of a political committee or the treasurer thereof."

This merely refers to the duty of a person making a contribution, whether he be himself a candidate for office or not. It refers to a contribution by any person, including a candidate, and has

reference to the duty of the person who makes the contribution, and not to the person to whom the contribution is made.

Section 546, to which reference is made in Section 541, reads as follows:

> "The treasurer of every political committee which, or any officer, member or agent of which, in connection with any election receives, expends or disburses any money or its equivalent, shall, within twenty days after such election, file a statement setting forth all receipts, expenditures, disbursements and liabilities of the committee, and of every officer, member and other person in its behalf. In each case it shall include the amount received, the name of the person or committee from whom received, the date of its receipt, the amount of every expenditure or disbursement, the name of the person or committee to whom it was made, and the date thereof; and unless such expenditure or disbursement shall have been made to another political committee, it shall state clearly the purposes of such expenditure or disbursement * * * The statement to be filed by a candidate or other person not a treasurer, shall be in like form as that hereinbefore provided for, but in statements filed by a candidate, there shall also be included all contributions made by him."

I would like to ask whether anybody in the rear part of the room has any difficulty in hearing me.

Senator Wagner.— At times you talk too rapidly.

Mr. Marshall.— Then I will reduce my speed.

The reference in section 546 to "The statement to be filed by a candidate or other person not a treasurer" harks back to section 541, which in turn refers to section 546. As has already been seen, section 541 relates to the duty of a person, "including a candidate," who contributes money to any person other than to the chairman, treasurer or member of a political committee, or to an agent duly authorized thereto in writing by such committee, or to a candidate or agent of a candidate. Here, again, this refers to a statement of payments made by, and not of payments to, the

person called upon to make the statement. Hence, when section 546 refers to a statement by the persons referred to in section 541, it is obvious that such statement can only be one which deals with the subject matter of section 541, namely, payments by, and not payments to, the individuals therein referred to.

In order to make it certain that, so far as a candidate is concerned, he is only called upon to make the statement specified in section 541 in order to avoid the possibility of an interpretation that he is not called upon to make the statement required by section 776 of the Penal Law, it is enacted that, "in statements filed by a candidate there shall also be included all contributions made by him." If the statement to be filed by a candidate referred to in section 541 had reference to anything other than the subject matter of section 541 of the Election Law, and that such statement would have to be in all things like the statement required from the treasurer of a political committee, what would have been the sense in expressly stipulating that the statement to be filed by a candidate shall include all contributions made by him?

Even this statement is subject to the further exception contained in section 541, that it need not contain a statement of the personal expenses set forth in section 542 of the Election Law, which provides that a candidate "may incur and pay in connection with such election, his own personal expenses for travel and for purposes properly incidental to traveling; for writing, printing and preparing for transmission any letter, circular or other publication not issued at regular intervals, whereby he may state his position or views upon public or other questions; for stationery and postage; for telegraph, telephone and other public messenger service; but all such expenditures shall be limited to those which are directly incurred and paid by him."

Then follows the provision: "A candidate shall in any event file a statement of any contributions made by him," which is again inserted out of abundance of caution, to avoid the implication that section 776 of the Penal Law is to be superseded.

It is evident that the statement to be filed by a candidate cannot be the equivalent of the statement of campaign receipts and payments required of the treasurer of a political committee. If

it had been so intended, it would have been simplicity itself to have stated, that a candidate shall file just exactly such a statement as the treasurer of a political committee is called upon to make. The very fact that there is a differentiation in the terms and phraseology of the statute with respect to the statement to be filed by a candidate, shows that his statement is of an entirely different character from that which is to be made by the treasurer of a political committee, and that it can only have reference to expenditures and contributions made by him, and not to any contributions made to him.

The fact that the statement filed by the candidate shall be in like form as that theretofore provided must necessarily mean that, so far as applicable, the statement shall be in like form. That phrase is to be read distributively; otherwise it would result in a meaningless jumble of words, which, to a great extent, would be left without force or meaning, a consequence to be avoided in the interpretation of any statute. Our interpretation, on the other hand, gives full effect to every word or phrase contained in this statute, and, in consequence, is the more acceptable interpretation.

Section 544 does not in any manner affect the proposition which we are now discussing, because it refers to a person acting as an officer, member, or under authority of a political committee, or under the authority of a candidate, who receives any money or its equivalent, or expends or incurs any liability to pay the same. It does not refer to the candidate himself, or to any duty owed by him.

The Corrupt Practices article, as has been seen, and as will be hereafter more fully discussed, does not require an oath to the statement filed under its provisions. It merely calls for a statement. It nowhere refers to the word "affidavit," or to a sworn statement or verified statement. Moreover, there is no provision in the statute which makes its provisions self-executing. The mere failure to file a statement, or the filing of a false statement, is not in and of itself made a crime. Non-compliance with the terms of the statute is merely made the basis of contempt proceedings, which may or may not result in the imposition of a penalty.

The statute creates a new duty, establishes a new remedy for the enforcement of such duty, and prescribes a particular method of procedure. It is a proposition which runs back to the beginnings of our law, that, under such circumstances, the statutory remedy is exclusive, and if it does not declare the violation of its provisions a crime, such violation is not indictable.

In Brown v. Buffalo, etc., R. R. Co., 22 N. Y. 191, Judge Welles said (p. 197):

> "In Behan v. People, 17 N. Y. 516, Pratt, J. who delivered the opinion of the court, says: 'It is well settled, that where an act is prohibited by statute, which is not criminal at common law, and a penalty is imposed in the same statute, declaring such prohibition, the act is not indictable.' The same learned judge then remarks, that the rule is based on the assumption that the Legislature, having fixed the penalty at the same time of prohibiting the act, designed that there should be no other punishment."

In People v. Stevens, 13 Wend. 341, Sutherland, J. said:

> "Where a statute creates a new offense, by making that unlawful which was lawful before, and prescribes a particular penalty and mode of proceeding, that penalty can alone be enforced."

In Rex v. Robinson, 2 Burr. 800, Lord Mansfield said:

> "The rule is certain, that where a statute creates a new offense, by prohibiting and making unlawful anything which was lawful before, and appoints a special remedy against such new offense (not antecedently unlawful) by a particular sanction and particular method of proceeding, that particular method of proceeding must be pursued, and no other."
>
> "The principle is a very ancient one, and has never been departed from; it is a most rational interpretation of the law-making power."

In Mairs v. Baltimore & Ohio R. R. Co., 175 N. Y. 409, Judge Haight, at p. 413, said:

> "Where the Legislature prohibits or requires the doing of an act and prescribe a punishment that shall be inflicted for

a violation of its mandate, the punishment furnishes the exclusive remedy for the wrong, so far as the public is concerned."

"In the earlier decision in People v. Hislop, 77 N. Y. 331, the Court of Appeals decided that where a statute creates a new offense making that unlawful which was lawful before, and prescribes a particular penalty therefor, that penalty alone can be enforced; the offense is not indictable (In re Barker, 56 Vt. 26)."

In Stafford v. Ingersoll, 3 Hill, 38, Mr. Justice Bronson said:

"So, where a statute creates a right which did not exist before, and prescribes a remedy for a violation of it, that remedy must be pursued." (Almy v. Harris, 5 John. 175).

So, in Renwick v. Morris, 7 Hill, 575, the Chancellor declared:

"Where a new offense is created, and a penalty is given for it, or a new right is given, and specific relief given for the violation of such right, the punishment or remedy is confined to that given by statute."

It is well settled law, that where a statute imposes a new duty where none existed before, and gives a specific remedy for its violation, the presumption is that this remedy was meant to be exclusive, and the party complaining of the breach is confined to it. Cooley on Torts, 2d Ed., 783; Atkinson v. Newcastle, L. R. 2 Exch. Div. 441; Almy v. Harris, 5 John. 174; Moore v. Gadson, 93 N. Y. 12; Grant v. Slater Mills, 14 R. I. 380.

Let us now, in the light of this principle, further examine the Corrupt Practices Article, for the purpose of indicating the application to the present case of the rule laid down in the authorities which have been cited.

Section 550 provides that, if any person or persons or committee or committees fails to file a statement or account as required, or if a statement is filed which does not conform to the requirements of the statute in respect to its truth, sufficiency in detail, or otherwise, the Supreme Court or any justice thereof may compel such person or committee to file a sufficient statement, by an order in proceedings for contempt.

Section 551 provides that these proceedings may be instituted by the Attorney-General, a District-Attorney or a candidate, or by any five qualified voters who voted at the election in question.

Section 552 requires the petitioner to file an undertaking for costs, and provides that upon the presentation of the petition and the giving of the security the court or justice may grant an order directing the person against whom it is issued to show cause why he should not file a statement of election expenses or amend the statement already filed, and furnish the court or justice with such other information as may be required.

Section 553 specifies the time within which the proceedings must be brought.

Section 554 indicates the summary nature of the proceedings; and further sections provide for a preference of such proceedings over other causes, appeals to be taken therein, subpoenas to be issued, personal privilege of witnesses, and the conduct of the hearing.

Section 560 then provides for the judgment to be rendered in said proceeding, and if the person or committee proceeded against has failed to file the required statement, or has filed a false or incomplete statement, "without wilful intent to defeat the provisions of this article," the judgment shall require the person proceeded against to file such statement or such amendment to the statement, as shall render the same true and complete, within ten days of the entry of the judgment, and to pay the costs of the proceeding. If such person or committee has failed to file the statement, or has filed a false or incomplete statement, "due to the willful intent to defeat the provisions of this article," or if the person or persons proceeded against shall fail to file the required statement or amendment as directed by the judgment, within ten days after the entry thereof, such person or committee shall be liable to a fine not exceeding $1,000 or imprisonment for not more than one year, or both. If such person or committee has filed a statement complying with the provisions of the article, or if they are not required to file the statement as prescribed, the Court or justice shall render judgment against the applicant or applicants and in favor of the person or committee proceeded against, for his or their costs and disbursements.

We have, therefore, a complete course of procedure, marked out with the fullest detail, which provides of necessity an exclusive remedy. No crime, whether felony or misdemeanor, is therefore created by it. Noncompliance with its terms can only be made the basis of the specific procedure contemplated by the statute, which may or may not result in the imposition of punishment as for a contempt.

The constitutionality of the provision with regard to punishment, contained in this statute, is doubtful, for it deprives the person proceeded against of his right of trial by jury. But, without urging that point, it is enough for the purposes of this case to demonstrate, as we believe we have, that the allegation of crime cannot be predicated upon the failure, whether willful or otherwise, to comply with the requirements of this statute.

The foundation, therefore, upon which the impeachment Managers have built their charges against the respondent, rests upon sand. The offense charged does not conform to the allegation of the articles, that it either constitutes willful and corrupt misconduct in office or a crime or misdemeanor, high or otherwise.

We will not at this stage of the argument discuss the question as to whether the omission of the contributions specified in the articles, was wilfully, knowingly and corruptly made. That will be done in due time, and under another head. But assuming, for the moment, that the allegations contained in the statement filed were false because of the omissions alleged, and that they were intentionally false, can it be seriously argued that the statement of a falsehood is ground for impeachment? If it is, then many a high official in this country has subjected himself to the pains and penalties of impeachment. Many a charge of falsehood has hurtled through the air. The Ananias Club has been largely recruited from the ranks of officialdom, and if a falsehood uttered by one who is elected to office, before he enters upon the performance of his duties, may be made the basis of impeachment, where will the line be drawn, and by whom? Though the Psalmist, when he said in his haste, that all men were liars, was somewhat inaccurate, or else mankind has greatly improved since the utterance of this striking passage, yet even in our day, if the telling of a lie, whether of the black or white variety, were once recognized

as ground for impeachment, there would be many vacancies to be filled.

We now come to the second Article, wherein it is charged that the respondent committed willful and corrupt perjury, in that he attached to the statement filed by him an affidavit in which he swore that the statement was in all respects true, and was a full and detailed statement of all moneys received or contributed or expended by him, directly or indirectly, by himself or through any other person, in aid of his election; that this statement was false in that it did not contain the contributions that had been received by the respondent from Jacob N. Schiff and others. These acts are charged as constituting a violation of section 1620 of the Penal Law. That section reads as follows:

> "A person who swears or affirms that he will truly testify, declare, depose, or certify, or that any testimony, declaration, deposition, certificate, affidavit or other writing by him subscribed, is true, in an action, or a special proceeding, or upon any hearing or inquiry, or on any occasion in which an oath is required by law, or is necessary for the prosecution or defense of a private right, or for the ends of public justice, or may be lawfully administered, and who in such action or proceeding, or on such hearing, inquiry or other occasion, willfully and knowingly testifies, declares, deposes, or certifies falsely in any material matter, or states in his testimony, declaration, deposition, affidavit, or certificate, any material matter to be true which he knows to be false, is guilty of perjury."

We have already shown that while the statement required under section 776 of the Penal Law must be verified, that required under the corrupt practices article does not call for verification. It is satisfied by an unsworn statement. So far as the statement filed conforms to the requirements of section 776, in that it states the contributions or expenses made by or incurred by the respondent, there is no question as to its truthfulness. It is only in so far as it purports to state the contributions to the respondent that it is claimed to be false, in that it does not state all of the

contributions which it is asserted were made to him for election purposes.

It would seem to follow from this statement, which is indisputable, that, in so far as the affidavit made by the respondent relates to contributions made to him, it was voluntary and extra-judicial, not being an oath required by law, and hence does not come within the definition of perjury. One of the essential elements of that definition is, that the person proceeded against shall have sworn falsely on an occasion in which an oath is required by law, or is necessary. Our statute merely follows the common law in this regard. Thus, in 2 Bishop's Criminal Law, 5th Edition, that great author, and one of the greatest authors on criminal law, speaking of the elements of the crime of perjury, says:

> "Section 1017. The principle chiefly to be elucidated under this sub-title, is, that the oath must be required in some judicial proceeding or course of justice, and the statement must be taken substantially in the form directed by law, before an officer authorized to administer it."
>
> "Section 1019. Where a party offers himself as a witness and is accepted, his oath may have weight in determining the issue; but here it was merely voluntary and impertinent: as if a party filing a declaration in the court of common pleas should think proper to make oath of its truth." Citing State v. Halle, 2 Hill, S. C., 290; Silver v. State, 17 Ohio, 365.
>
> "Section 1021. In the United States Court — a statute providing a punishment 'if any person, in any case, matter, hearing, or other proceeding, when an oath or affirmation shall be required to be taken or administered, under or by any law or laws of the United States, shall upon the taking of such oath or affirmation, knowingly or willfully swear or affirm falsely,' — McLean, J., held, that an oath not required by law or by order of the court, administered by the clerk of the court, is extra-judicial, and though false, lays no foundation for an indictment." United States v. Babcock, 4 McLean, 113.

"Section 1027. We are thus led to the general proposition, that no extra-judicial oath will sustain an indictment for this offence. (Pegram v. Styron, 1 Bailey, 395; Landen v. State, 5 Humph. 83; Wagoner v. Richmond, Wright, 173; Rex v. Foster, Russ. & Ry. 459; Jackson v. Humphrey, 1 John. 498; United States v. Nickerson, 1 Sprague, 232). Therefore, in South Carolina, swearing to an account to render it in and before an administrator, has been held to be extra-judicial, not subjecting the party who swears falsely to an indictment. A like doctrine has been held in Tennessee as applicable to a case in the court of Chancery, wherein there was no right to administer the oath. So, 'a false oath,' says Hawkins, 'taken by one upon the making of a bargain, that the thing sold is his own, is not punishable as perjury.'"

In 22 Am. & Eng. Encyc. L., 2nd Ed. p. 685, title "Perjury", it is said:

"The oath or affidavit must be one authorized or required by law. Perjury cannot be assigned on a voluntary or extra-judicial oath." United States v. Grottkau, 30 Fed. Rep. 672; United States v. Howard, 37 Fed. Rep. 666; People v. Travis, 4 Park. Cr. 213; People v. Titmas, 102 Mich. 318; Linn v. Commonwealth, 96 Pa. St. 285.

In 30 Cyc. L. & Pr., title "Perjury", p. 1411, it is said:

"The taking of a mere voluntary oath that is nowhere authorized or required by law, is not perjury." Citing among other cases, State v. McCarthy, 41 Minn. 59.

In People v. Martin, 175 N. Y. 319, which was cited on a previous occasion here, the only question involved was whether there could be a prosecution for perjury predicated on a false statement contained in an affidavit taken in the State of New York for use in Delaware, and it was incidentally stated that an oath that is "purely voluntary and extra-judicial" does not come within the perjury statute.

Not only is it necessary in order to constitute perjury, that the oath taken shall have been required by law, but it is also

essential that the matter claimed to have been false shall have been material. That is also an express requirement of the statute. Hence, one who testifies, even wilfully, knowingly and falsely, to a material fact, does not commit perjury. That was recently decided by the Court of Appeals in People v. Teal, 196 N. Y. 376, and in this respect our statute conforms strictly with the common law. Roscoe's Cr. L., 328; 2 Russell on Crimes, 481, 489; Dunkle v. Wilds, 11 N. Y. 482; Wood v. People, 59 N. Y. 120; People ex rel. Hegeman v. Corrigan, 195 N. Y. 1.

In People ex rel. Hegeman v. Corrigan, it was held that the question whether, in a prosecution for perjury, testimony which is charged to be false is material or not, was a question of law.

Inasmuch as the respondent, as a candidate for office, was not required to make any statement as to the moneys received by him, but was confined to a statement of the moneys contributed and expended by him, this affidavit, in so far as it referred to moneys received, was immaterial, and consequently cannot be made the basis of a charge of perjury.

Not only is it necessary that the oath taken is one required by law, and that the matter charged to be false was material, but the false statement must be willfully, knowingly and corruptly false. It must be made with criminal intent. Mere untruthfulness is not sufficient. If there was mere mistake or carelessness, or misinformation, there can be no basis for the charge of perjury.

This subject has been recently so fully considered by the Court of Appeals in People ex rel. Hegeman v. Corrigan, 195 N. Y. 1, that this Court will be greatly aided in its present deliberations by a detailed reference to that case. It was there held that to constitute perjury, there must be criminal intent. Ordinarily, criminal intent is an intent to do, knowingly and wilfully, that which is condemned as wrong by the law and common morality of the country, and if such an intent exists it is neither justification nor excuse that the actor intended by its commission to accomplish some ultimate good.

To constitute perjury, it is not necessary to establish any other intent than that specified in the statute. It is not sufficient that the affiant testifies as to what is false, but the testimony must

be given wilfully and knowingly, and the affiant must know that the testimony is false if it be given in the honest belief that it is true, or by mistake or inadvertence, the case does not fall within the statute.

As Chief Judge Cullen says:

> "The perjury with which the relator is charged is the verification under oath of a report to the Insurance Department of the State, in which in answer to a question calling for the statement of the loans held by the company secured by a pledge of bonds, stock or other collateral, it is stated that there were none. For the purpose of determining whether the evidence was sufficient to justify the magistrate in issuing a warrant, it becomes necessary to consider the rules of law applicable to the case. Section 96 of the Penal Code prescribed 'A person who swears or affirms that he will truly testify, declare, depose or certify, or that any testimony, declaration, deposition, certificate, affidavit or other writing by him subscribed is true in an action, or a special proceeding, or upon any hearing or inquiry, or on any occasion in which an oath is required by law, or is necessary for the prosecution or defense of a private right or for the ends of public justice, or may lawfully be administered, and who in such action or proceeding, or on such hearing, inquiry or other occasion, wilfully or knowingly testifies, declares, deposes or certifies falsely in any material matter, or states in his testimony, declaration, deposition, affidavit or certificate any material matter to be true which he knows to be false, is guilty of perjury."

Doubtless, to constitute perjury, there must be criminal intent, but intent must be distinguished from motive and from ultimate object. As was said by Judge Werner in People v. Molyneaux, in 168 N. Y. p. 264, at page 297:

> "In the popular mind intent and motive are not infrequently regarded as one and the same thing. In law there is a clear distinction between them. Motive is the moving power which impels to action for a definite result. See

> Burrill's Law Dictionary, Volume 1. Motive is that which incites or stimulates a person to do an act. Motive is never an essential element of a crime. A good motive does not prevent the act from being the crime. Clark's Criminal Law, section 14. There runs through the criminal law a distinction between offenses that are mala prohibita, in which no intent to do wrong is necessary to constitute the offense, and offenses that are mala in se, in which a criminal intent is a necessary ingredient of the crime."

While there are to be found both in judicial decisions and in text books elaborate discussions of what is a criminal intent, no attempt has been made to accurately define the term. Very possibly the attempt to make a definition so comprehensive as to be applicable to all cases would be futile, and it has often been doubted whether the term intent is an accurate one. However this may be it is very apparent that the innocence or criminality of the intent in a particular act generally depends on the knowledge or belief of the actor at the time. An honest and reasonable belief in the existence of circumstances which, if true, would make the act for which the defendant is prosecuted innocent, would be a good defense. Thus, if a man killed another under such circumstances as gave proper and reasonable grounds for the belief that the person killed was about to take the life of the slayer, although the person killed was only playing a practical joke, no crime would be committed, but, if the facts and circumstances which the person believed to exist were not such as in law to justify his act, then there would be no defence to the act. In other words, it is the knowledge or belief of the actor at the time that stamps identically the same intent as either criminal or innocent, for the intent to take life, unless, under circumstances that the law regards as sufficient to justify the killing, is the criminal intent and the only criminal intent that can exist in case of murder, excepting where the killing is done in the commission of an independent felony. So, ordinarily, a criminal intent is an intent to do knowingly and wilfully that which is condemned as wrong by the law and common morality of the country, and if such an intent exists, it is neither justification nor excuse

that the actor intended to accomplish some ultimate good. 1 Bishop's Criminal Law, § 341.

To constitute perjury under our law it is not necessary to establish any other intent than that specified in the statute, for by its terms it is not sufficient that the affiant testifies as to what is false, but the testimony must be given wilfully and knowingly, and the affiant must know that the testimony is false; if it be given in the honest belief that it is true or by mistake or inadvertence, the case does not fall within the statutes."

As to intent in perjury, Hawkins says, 1 Pleas of the Crown (Corw. ecl.), p. 439, sec. 2:

> "It seemeth that no one ought to be found guilty without clear proof that the false oath alleged against him was taken with some degree of deliberation; for if, upon the whole circumstances of the case, it shall appear probable that it was owing rather to the weakness than perverseness of the party, or where it was occasioned by surprise, or inadvertency, of a mistake of the true state of the question, it cannot but be hard to make it amount to voluntary and corrupt perjury, which is of all crimes whatsoever the most infamous and detestable."

Referring now to the evidence which bears upon this branch of the case, and which is the same evidence on which the Impeachment Managers rely to establish their charge under the first article, that the statement therein referred to was made and filed "wilfully, knowingly and corruptly," we have the facts, which have been most luminously explained by Louis A. Sarecky.

I will not take the time to analyze that testimony. I have read it as it appears in the record. The Court has heard it within the last few hours. Therefore it would merely mean a waste of time to review it and repeat it and if anything is clear it appears distinctly from the testimony of Sarecky, who testified like an honest man, without reservations of any kind, that the making of this affidavit in the manner in which it was made was due entirely to inadvertency and mistake and not with corrupt and willful intent.

Not only do these facts indicate an absence of criminal intent, but the proof also shows that the various donors who are referred to

in articles 1 and 2, so far as any evidence was given by them, did not make their gifts to the respondent specifically as campaign contributions, to be used solely to meet election expenses, but for any purpose that the respondent might desire. This is well illustrated by the testimony of Jacob H. Schiff, Mr. Morganthau, Dr. Cox and Mr. Dooling, and other testimony.

It is not pretended that the respondent's expenditures for campaign purposes were more than $7,724.09. Hence, so far as all the purposes of the law were concerned, it was unimportant, at least under the circumstances as disclosed by the testimony it was considered unimportant, to state what gifts the respondent received, which he did not understand, and which the donors did not understand, were to be used for campaign purposes. In no event could any moneys be charged as having been received for campaign purposes, which the respondent did not understand he was required to use for that purpose. Certainly he was under no obligation to expend all the moneys which he received during the campaign, whether the money was needed or not.

The material question in this connection is, whether the respondent understood that he was called upon to account for moneys which he did not expect to use for campaign purposes, as having been received for that purpose. If he did not intend to use them for campaign purposes, if they were received by him with the understanding on his part that he was to use them for any purpose that he might see fit, he would not be guilty of wilful and corrupt swearing by omitting from his statement the moneys which he received and used for purposes other than to meet his election expenses. In fact the Impeachment Managers, by framing the sixth article on the charge of larceny, based on the alleged appropriation of the very contributions mentioned in Articles I and II, indicate that if any offense was committed it was not that of perjury.

We repeat that, in dealing with Articles I and II, the intent which is to be considered is not the intent of the donors, whatever that may have been, but the intent of the respondent with respect to the purpose for which the moneys were to be used by him. The Impeachment Managers have been at great pains to show that he did not intend to use these moneys for election or

campaign purposes. Hence the absence of the specific intent which must exist in order to constitute the crime of perjury has been incontrovertibly established by the Impeachment Managers themselves.

Those who have had any experience or opportunity for observation with respect to the statements made in connection with campaign contributions know that there prevails a great state of confusion in the minds of candidates for public office in regard to the statements which they are called upon to make and file. Political campaigns are conducted amid great excitement. Candidates for office are frequently men of little business experience, unaccustomed to keeping books or accounts with any degree of care or accuracy, liberal in their expenditures, and unfamiliar with the requirements of the statute, which are generally brought to their notice after the election is over, and under circumstances which make it exceedingly difficult to prepare a statement with entire accuracy. Those who have investigated the subject assert that but few candidates for office are able to comply, or actually comply, with the provisions of the Corrupt Practices Article, not because of any intention to violate the law, but because of the difficulty of understanding it, and of in fact complying with it.

While every good citizen recognizes the wisdom of this legislation, and desires to observe it and to comply with its terms, it would be laying down a rule of exceeding harshness to declare that an attempt to commit perjury is predicable upon the failure to comply with the terms of the statute. In fact the very language of the Corrupt Practices Act, which we have quoted, indicates that it was never intended by the Legislature that perjury should be predicated upon a false statement contained in a report filed, because it is declared that if the parties who were required to file the statement have filed " a false or incomplete statement," and such " false or incomplete statement was due to wilful intent to defeat the provisions of this article," the person proceeded against shall, in the contempt proceedings indicated, be liable to a fine not exceeding $1,000 or imprisonment for not more than one year, or both. This is inconsistent with the idea that the crime of perjury can be predicated upon a wilful and intentional filing of a false statement under the corrupt practices article; in

other words, its provisions are exclusive and create an exception to the law with regard to perjury, and the only remedy is under the statute, and perjury is not intended to be predicated upon any violation of the Corrupt Practices Act. That is accentuated by the fact that that false statement with regard to contributions made by a candidate required by section 776 is not defined as a felony but merely as a misdemeanor.

It would seem, therefore, that there is not even the shadow of a justification for the charge of perjury against the respondent.

Growing out of the same facts as those which have just been considered, is Article VI, which charges the respondent with the crime of grand larceny, in violation of sections 1290 and 1294 of the Penal Law. It is alleged that while a candidate for the office of Governor various persons contributed money and checks representing money to the respondent to aid his election to the office of Governor; that such money and checks were delivered to him "as bailee, agent or trustee, to be used in paying the expenses of the election and for no other purpose whatever;" and that the respondent "with the intent to appropriate the said money and checks representing money thus contributed and delivered to him as aforesaid for his own use, having the same in his possession, custody or control as bailee, agent or trustee as aforesaid, did not apply the same to the uses for which he has thus received them, but converted the same and appropriated them to his own use and used the same, or a large part thereof, in speculating in stocks through brokers operating on the New York Stock Exchange, and thereby stole such money and checks and was guilty of larceny." The money and checks thus claimed to have been stolen is the same money referred to in Articles I and II.

This article charges that it is drawn under section 1290 of the Penal Law, which reads as follows:

> "Sec. 1290. Larceny defined. A person, who, with the intent to deprive or defraud the true owner of his property, or of the use and benefit thereof, or to appropriate the same to the use of the taker, or of any other person:
>
> "1. Takes from the possession of the true owner, or of any other person; or obtains from such possession by color

or aid of fraudulent or false representation or pretense, or of any false token or writing; or secretes, withholds, or appropriates to his own use, or that of any person other than the true owner, any money, personal property, thing in action, evidence of debt or contract, or article of value of any kind; or,

"2. Having in his possession, custody, or control, as a bailee, servant, attorney, agent, clerk, trustee, or officer of any person, association, or corporation, or as a public officer, or as a person authorized by agreement, or by competent authority, to hold or take such possession, custody, or control, any money, property, evidence of debt or contract, article of value of any nature, or thing in action or possession, appropriates the same to his own use, or that of any other person other than the true owner or person entitled to the benefit thereof,

"Steals such property, and is guilty of larceny.

"Hereafter it shall not be a defense to a prosecution for larceny, or for an attempt or for conspiracy to commit the same, or for being accessory thereto, that the purpose for which the owner was induced by color or aid of fraudulent or false representation or pretense, or for any false token or writing, to part with his property or the possession thereof was illegal, immoral or unworthy."

It is not pretended that the acts referred to constitute common law larceny, as within the meaning of subdivision 1 of the section just quoted. Such a charge would have defeated itself for it is alleged that the money was contributed and delivered to the respondent; that it lawfully came into his possession; and that whatever wrong he did, so far as it relates to the money or checks, was committed after he had lawfully acquired possession of the money and checks.

There can be no common law larceny without a trespass and a wrongful asportation. There can be no trespass where possession has been given to the person charged with the commission of the crime by the original owner of the property claimed to have been

stolen. As Bishop well says in II Bishop's Criminal Law, Fifth Edition, Section 111:

> "There can be no trespass where there is a consent to the taking. Suppose the consent is obtained by fraud, when, as already explained, the owner means to part with his property absolutely, and not merely with the temporary possession of it, the result is the same; for by reason of the consent, there is still no trespass, therefore no larceny."

The Impeachment Managers are therefore driven to the position that the respondent having lawfully received possession, custody and control of the money and checks claimed to have been stolen, committed what is known at the common law as embezzlement, that crime being defined by subdivision 2 of section 1290 of the Penal Law.

In order to lay the basis for this contention, it is alleged that the money was received "as bailee, agent or trustee." It is not stated whose bailee, agent or trustee the respondent is claimed to have been. It is to be inferred that the pleader thought to indicate that he was the bailee, agent or trustee of the persons named in the article as donors of the money and checks claimed to have been stolen. So far as these persons are concerned, and the same is true of all other donors of checks and money to the respondent who have been called, each of them shows that when he gave the check or money in question he did so unreservedly, without any agreement, statement or understanding that the money or check given, or any part of it, was ever to be repaid. There was an absolute parting with the title to the money or check delivered. None of these witnesses claim nor is it alleged that any of them ever demanded the return of his donation or any part of it. None of them have made complaint with respect to the manner in which his donation was used.

Mr. Schiff testified that "When I used the expression 'campaign funds,' it was a very general expression. I certainly had no objection whatsoever, and I think it was the general intent and purpose of the conversation, that Governor Sulzer could use this $2,500 for whatever he would please." At page 25 he testifies:

"If I searched my mind, I would say to you that Governor Sulzer could have had this $2,500 at any time and for any purpose, and if I had been very careful I would not probably have used the words 'campaign expenses' because I really meant he should have the free use of it.

"Q. Did you intend, Mr. Schiff, that he might use it for any purpose whatsoever? A. Yes, for any legitimate purpose."

On being recalled, he confirmed all that he had previously stated, indicating that it was his intention to part absolutely with the money given by him.

Mr. Morgenthau testified:

"Q. Mr. Morgenthau, how long have you known Governor Sulzer? A. Oh, for many, many years; possibly twenty.

"Q. You knew him well and intimately? A. Yes; I knew him well.

"Q. And your relations were of a friendly character? A. They were.

"Q. Was there anything said in the conversation that you have related as to the use to which he was to put the thousand dollars? A. There was nothing said.

"Q. Did you in any way intend to limit him as to the use that he was to make of the thousand dollars? A. I did not."

Judge Conlan, who presented a group of donors, testified that he had a conversation with Mr. Potter in the Manhattan Club:

"We were speaking generally about politics. They were quite warm at that time and I told him that I did not believe Sulzer had a cent, or words to that effect, and that I intended to give him a contribution and that I thought it would be graceful on the part of his friends to contribute something to help him out; Mr. Potter said he entirely agreed with me and that he would give his check.

"Q. Many other of these contributions you obtained were obtained at the Manhattan Club, were they not? A. They were all.

"Q. And did you talk to them? A. Yes.

"Q. About his impecunious condition? A. I talked with several in the club; it was a matter of common conversation.

"Q. I mean as to his financial condition? A. As to his financial condition.

"Q. And the necessity of doing something to help him out? A. Yes; I was anxious to get money; I believed he needed it.

"Q. In other words, he was to use this money that you brought him for his personal purposes, clothing, hat, anything that he might want to spend it for? A. I said yesterday that I put no restriction upon it."

Daniel M. Brady told the Governor, in substance, that he was to use the money for his personal purposes, anything he might want to spend it for.

Richard Croker, Jr., told Mr. Sulzer he would like to help him to the extent of giving him $2,000 towards covering his personal expenses. He said: "At last I said to him that I wished he would consider the giving of this money as a personal and confidential matter. I intended he should use it for any personal expenses in connection with the campaign or in connection with anything."

Doctor Cox testified: "I gave this check to Mr. Sulzer for his personal use."

John Delahanty said: "I told him that I brought something to help him or to help him out. I did not limit the use of it in any way nor did I attempt to direct him what he should do with it. I told him, in substance, that he was to use the money that I brought him for his personal purposes, anything that he might want to spend it for."

Mr. Garber enclosed a check with a letter in which he said: "I congratulate you upon your nomination. I herewith enclose check for $100."

Mr. Mandelbaum testified that he brought the Governor a check for $200, and said: "I did not tell him what it was for. I did not say anything to Sarecky except it was $200 George W. Neville requested me to hand to Mr. Sulzer."

John F. O'Brien sent a check in a letter in which he stated: "I enclose herewith my check for $50 as a contribution."

Frank M. Patterson testified that he gave the respondent a check for $500 and said: "I had told Sulzer prior to this time that I was very much interested in his campaign and that I would give him a personal contribution in addition to those which I gave the regular committees, as was my custom. I did not place any limit or restrictions upon the use of this money. This contribution I considered as a personal one and not as a political contribution. He could do what he pleased with it."

Cornelius C. Pinckney, whose testimony is contradicted and lacking probability, testified: "I asked Sulzer whether he was in need of any money, and he said that he had no objection to taking it; in fact, he would like to have contributions as long as the persons who gave it to him felt as though they could afford it," and then he adds that Mr. Sulzer immediately said: "This was not to be considered as an appropriation which was to be accounted for."

John S. Sorenson, representing the firm of Crossman & Sielcken, delivered to the respondent $2,500, and all he said was: "I have been sent by Mr. George W. Crossman to hand you this."

Mr. Dooling testified that he made his contribution as the result of a conversation with a friend of the respondent who spoke to him relative to his financial condition.

Mr. Bernard said he gave this money as a personal contribution to Mr. Sulzer. Mr. Gwathmey and others testified that their contributions were purely personal.

While some of the witnesses stated that their contributions were in connection with the campaign, and probably would not have been made to him but for the fact that the campaign was in progress, there is not even a suggestion on the part of any of these witnesses that the money was paid to the respondent in a fiduciary capacity or that the relation of principal and agent was created between them. It is not pretended but that the money was paid to the individual for whose benefit it was intended to be given. At the most, there was a hope, expectation or desire that the money was to be used in connection with the campaign. Nobody, however, desired the money to be wasted or expended uselessly, or

employed for illegal purposes, and none of the donors had the remotest idea that he was to receive back a dollar of the money which he gave. Nobody has ever had such an idea who has given political contributions. If it should now be decided that there is a right to get back the money I find that I have unsuspected assets.

In the past twenty-five years millions of dollars have been given by friends and admirers of candidates for political office, and it is believed that in all that time no donor of money so given has ever received back, or expected that he would receive back a single dollar. The money is given in a spirit of liberality, of amity, of expensiveness, due to the excitement of the hour, unreservedly, and with the purpose of parting with it forever.

There is, therefore, in this case no basis for a charge of embezzlement. That crime, as well as larceny, is a crime against property. It is an invasion upon the right of ownership. It is therefore a sine qua non that the property claimed to have been stolen belonged legally to a person other than the accused. An indictment in such a case must plead the title of the person whose property is claimed to have been embezzled, and he must prove that the legal title to the property was in the individual who is charged to have been the owner. Who can say in the present case that the title to the moneys given to the respondent remained in the donors for any purpose?

Could Mr. Schiff or Mr. Morgenthau be heard to assert that they continued to be the legal owners of this fund, or that their right of property to the moneys given by them to the respondent had been invaded within the meaning of the criminal law? They admitted that it was their intention to part absolutely with the title to the money which they gave. That is absolutely conclusive under the principle which runs throughout the criminal law, so far as it relates to crimes against property, that volenti non fit injuria.

The subject of intent in this connection is admirably discussed in 1 Wigmore on Evidence, section 581, and is sustained by a multitude of decisions covering cases of fraud, of usury and of assaults of various kinds.

Seymour v. Wilson, 14 N. Y. 567.
McKown v. Hunter, 30 N. Y. 624.

Thurston v. Cornell, 38 N. Y. 281.
Cortland County v. Herkimer County, 44 N. Y. 22.
People v. Kerrains, 60 N. Y. 221.
Filkins v. People, 69 N. Y. 106, 107.
People v. Flack, 125 N. Y. 335.
Davis v. Marvin, 160 N. Y. 267.
People v. Moore, 37 Hun, 94.

Even if it were conceded for the sake of the argument that some of these moneys were given on condition that they were to be used for campaign purposes and for no other purpose, and that they were to be repaid if not so used — a most violent and unnatural and artificial presumption — certainly the possession of these funds by the respondent was lawful. The most that the donors could claim, if any claim they should make, would be that the respondent had a defeasible title to the moneys which he received. In the absence of a demand that the money should be returned, his possession would continue to be lawful and the crime of embezzlement would not be established. There is not the shadow of a pretence that anybody ever made any demand upon the respondent for any part of this money, nor is there anything to indicate that if any demand had been made, the respondent would not have been ready and willing to repay the amount demanded. In fact, it has been shown that Mr. Schiff was unwilling to receive back the money which had been contributed by him, or any part of it.

It is a well-established rule, not only in the criminal law, but on the civil side of the courts, that where one acquires title and possession to property lawfully, to change the character of the possession to a tortious one, a demand and a refusal are necessary. I cite many cases upon that subject which are familiar to the members of the Court of Appeals and to the lawyers who constitute a part of this body.

Addison on Torts, 312; Colebrook v. Wight, 24 Wendell, 169; Mont v. Derick, 5 Hill, 453; Hence v. Van Dyke, 6 Hill, 613; Goodwin v. Wertheimer, 99 N. Y. 146.

In the recent case of MacDonnell v. Buffalo Loan, Trust & Safe Deposit Company, 193 N. Y. 101, Judge Werner said:

> "The rule that one who comes lawfully into the possession of property cannot be charged with the conversion thereof until after a demand and refusal is too well established to justify extended discussion."

Citing Goodwin v. Wertheimer, supra; Converse v. Sickles, 146 N. Y. 200; Castle v. Corn Exchange Bank, 148 N. Y. 122; Tompkins v. Fonda Glove L. Co., 188 N. Y. 261.

But we are not required to stop our investigation at this point because not only is it necessary for the prosecution to show an invasion of the property right of a third party by the respondent, but it is also essential that it be shown that the relation existing between the respondent and those whose money is claimed to have been stolen, was that of bailee, agent or trustee. That is not only the precise language of the statute under which this article purports to have been framed, but it has always been the law. In XV Cyc. of Law and Practice, 492, it is said:

> "One cannot commit embezzlement of money or other property lawfully his own, or in which he has a general interest."

Certainly Mr. Sulzer had a general interest in this money.
At page 494 it is said:

> "In order to constitute embezzlement, the accused must occupy a designated fiduciary relation, and the money or property must belong to his principal or come to the possession of the accused by reason of such employment.
>
> "The fraudulent conversion of money paid by mistake is not embezzlement."

Commonwealth v. Hayes, 14 Gray 62; People v. Butts, 128 Mich. 208.

"Embezzlement cannot be charged with reference to funds acquired and spent before the party assumed the fiduciary capacity; nor where the relation of debtor and creditor subsists between the parties."

Smith v. Glendenning, 194 Pa. 45.

"Possession must be by reason of some special trust imposed."

Colip v. State, 153 Ind. 584.

"The trust relationship must exist at the time of the reception of the money by the agent or the money must have been under the care of the agent by virtue of that agency, in order to constitute the offense of embezzlement."

Taylor v. State, 29 Tex. 466, 501; citing Wharton's Criminal Law, 9th ed., sec. 1055, where it is stated:

"The term 'bailee' when used in embezzlement statutes, is not to be understood in its large, but in its limited sense, as including simply those bailees who are authorized to keep, to transfer or to deliver, and who receive the goods first *bona fide* and then fraudulently convert."

Let us now consider the record for the purpose of ascertaining whether the respondent received the moneys in question as the agent of anybody else. What were the terms of the agency? What were the limitations? Who was to determine what use was to be made of the money? Was the agency of Mr. Schiff a different agency from that of Mr. Elkus, or Mr. Morgenthau, or Mr. Dooling, or Mr. Ryan? Was the money of each of these donors to be kept separate? We are without light upon that subject. The alleged principals do not complain. They are absolutely satisfied. So far as the record indicates, every one of them came under compulsion. None of them has voiced dissatisfaction with the action of the respondent. It is the strangest case of agency that has ever come under the observation of anyone who has the

slightest familiarity with the legal concept which is denominated "agency."

We are in the same plight with regard to the idea of a bailment, as applicable to the present case. Which of the bailments described by Lord Holt in Coggs v. Bernard is this claimed to be? It has none of the elements of a depositum, a mandatum, a commodatum, a pignus or a locatio. The respondent was not called upon to deliver this fund to anybody, to receive it on deposit, it was not pledged to him, he was not acting as a common carrier, nor was he to perform any service in connection with it. There was no basis for even an action of tort based on any failure to return the money, or any part of it, or by reason of the use that the respondent actually made of it.

The impeachment managers are, therefore, compelled to fall back on the generalization that the respondent was a trustee, a fiduciary, and therefore, by reason of a breach of trust, has been guilty of larceny. This calls for an interpretation of the meaning of the term "trust." A trust is a right of property, real or personal, held by one party for the benefit of another.

Burnett v. Bookstaver, 10 Hun, 484;
Gifford v. Rising, 51 Hun, 1.

It is the relation between two persons by virtue of which one of them, called the trustee, holds the property for the benefit of another, called the cestui que trust.

Corby v. Corby, 85 Mo. 371, 378.

In its simplest elements, a trust is a confidence reposed in the trustee for the benefit of the cestui que trust with respect to property held by the former for the benefit of the latter. It implies two estates or interests, one equitable and one legal, and is said to exist where property is conferred upon and accepted by one person on terms of holding, using or disposing of it for the benefit of another.

Corby v. Corby, 85 Mo. 371, 378;
30 Cyc. of Law & Practice, Title "Trust," p. 18.

As it has been elsewhere expressed, a trustee is a person who takes and holds the legal title to the trust property for the benefit of another.

Dillenbeck v. Pennel, 121 Iowa 203;
Glengarry Consolidated Mining Co. v. Boehmer, 28 Colo. 1;
Welles v. Larabee, 36 Fed. Rep. 266;
Taylor v. Mayor, 110 U. S. 310, 335;
Black's Law Dictionary and Bouvier's Law Dictionary.

Every statement which I have here made is abundantly supported by authority.

How completely the house of cards erected by the impeachment managers disappears before these definitions. The very idea that the respondent received or held these moneys for the benefit of any other person than himself savors of humor.

What was the nature of the benefit which the cestui que trust, supposedly the creators of the trust, the donors, were to have? There is no pretense that even by mental reservation, they, or any of them, were to be the beneficiaries. Nor is there the slightest suggestion that any third party was to be the beneficiary. The donations were purely personal, they were not to be used or expended for the benefit of any third party. In other words, if the respondent was the trustee, he was likewise intended to be the beneficiary. If the trust was that the money should be used for campaign purposes, it was to be the respondent's campaign purposes, and not those of any other person, and the entire benefits of the alleged trust fund were to be those accruing to the respondent. To dignify this relation by the term of trust is to add a new abuse to that of misunderstood creation of the law.

But even if, by any stretch of the imagination, it were possible to deduce from the facts established the germ of a trust, it was withered at its very birth, for nothing is clearer than that the same person cannot be trustee and beneficiary. The equitable

estate of the beneficiary is merged in the legal estate, and ceases when the legal title is absolutely vested in the trustee.

Woodward v. James, 115 N. Y. 346;
Greene v. Greene, 125 N. Y. 506;
Woodbridge v. Bockes, 170 N. Y. 596;
Weeks v. Frankel, 197 N. Y. 304.

In Greene v. Greene, 125 N. Y., Judge Gray said:

> "The trustee and beneficiary must be distinct personalities; for otherwise there can be no trust, and the merger of interests in the same person would effect a legal estate in him of the same duration as the beneficial interest designed. * * * that the legal and beneficial estates can exist and be maintained separately in the same person is an inconceivable proposition. It is quite as much of an impossibility legally considered, as it is physically."

And in Weeks v. Frankel, 197 N. Y., Judge Haight said:

> "A trust contemplates the holding of property by one for the benefit of another, and consequently the same person may not at the same time be sole trustee and sole beneficiary of the same interest."

But we are not obliged to rest our contention even at this point where demonstration has performed its office most effectually. For whatever the form of larceny charged against the respondent himself, the crime cannot be established unless it is shown that the accused acted with a criminal intent, that he took or withheld from the true owner of the moneys given to him, the possession thereof *animo furandi,* with the intention of stealing.

If this were not the most solemn proceeding conceivable, the charging of an intent to steal under these circumstances would attain the Himalayan heights of the ridiculous.

It will suffice for the purposes of this case to permit this Honorable Court to draw a parallel between it and People ex rel. Perskins v. Moss, 187 N. Y. 410, with which Mr. Jerome was most familiar. The present case is infinitely stronger for the accused than was that which I have just cited, and because of the conclusion

which the Court of Appeals, including the dissenting judges, reached in that case, I venture to quote at length from the opinions there delivered.

Judge Gray said (pp. 419, 420):

> "It is apparent that what constitutes the crime of taking the property of another for the use of the taker, or that of any other person than the legal owner, is the intention with which the act is committed. Under the statute, the crime of larceny no longer necessitates a trespass; but it does need, as an essential element that the 'intent to deprive or defraud' the owner of his property, or of its use, shall exist. The intent, by necessary implication, as from its place in the penal statute must be felonious; that is to say, an intent without an honest claim or right. It is not now essential, as it was under the Roman and early English law, that the intention of the taker shall be to reap any advantage from the taking, the statute makes the crime to consist in the intent to despoil the owner of his property. That is necessary to complete the offense, and if a man, under the honest impression that he has a right to the property, takes it, it is not larceny, if there be a colorable title. (See Code Crim. Pro., sec. 548; People v. Grim, 3 N. Y. Cr. Rep. 317; Bishop's Crim. Law, secs. 297, 851; Wharton's Crim. Law, secs. 883, 884.) The charge of stealing property is only established by establishing felonious intent. Without it there is no crime; for it would be a bare trespass. It is the criminal mind and purpose going with the act which distinguished the criminal trespass from a mere civil injury. (1 Hale's P. C. 509; McCourt v. People, 64 N. Y. 583.) Doubtless, if the particular act was specified in the penal statute, an honest belief that it was right, while it would purge the act from immorality, would not relieve it from indictability. * * * If we turn then, to a consideration of the fact upon which the magistrate ordered the relator to be arrested, it is impossible, reasonably speaking, to find that criminal element which the statute makes a necessary one, the intent of the accused to steal. * * * Courts, however, may not sit to judge the conduct of a defendant by any

moral code, or rules of ethics. Their sphere is to ascertain if the facts shown establish the crime charged against him. In the facts stated in these depositions, I find none upon which criminality can be predicated. The essential element of the 'intent to deprive and defraud' is nowhere to be found, and there is no just basis for the inference. There was no concealment about the transaction and knowledge of it was conveyed to the other trustees. That the relator may have made a mistake of law, which will not relieve him from liability in a civil action, may be true, and he expressly disclaimed in his letter any intention to dispute such a liability, but this was a case where the intent or good faith was in issue, and then knowledge of the law is immaterial. (Knowles v. City of N. Y., 176 N. Y. at p. 439; Goodspeed v. Ithaca St. Ry. Co., 184 Id. at 354.) The relator came to the aid of the president of the company, who, as such, had agreed to contribute moneys to the campaign fund, and advanced the moneys, temporarily. Having done so, for no other reason than for the supposed advantage of the company, his claim to be reimbursed from the treasury of the company is openly presented, and it is paid. But within the spirit, if not the letter, of section 548 of the Penal Code, that was not larceny. The section provides that 'Upon an indictment for larceny it is a sufficient defense that the property was appropriated openly and avowedly, under a claim of title preferred in good faith, even though such claim is untenable.' This section is an expression of the emphasis which the statute lays upon the intent with which the property of another is taken. It is a qualification of the provisions of sec. 528 of the Penal Code, defining what shall constitute the crime of larceny. It is of considerable significance, as illustrating the legislative understanding, that when in 1906 the Legislature dealt with the question, specifically, the offense was declared to be a misdemeanor, not a larceny."

His Honor Judge Hiscock said (pp. 425, 426):

"It is agreed upon all sides that the crime of larceny may not be committed unintentionally, unconsciously or by mis-

take, but that in order to accomplish it the perpetrator must have the intent referred to. It may be difficult at all times exactly and satisfactorily to define this intent, but the requirement for it, as applicable to this case, means that when the relator took part in the appropriation of the moneys in question, he must have had in some degree that same conscious, unlawful and wicked purpose to disregard and violate the property rights of another, which the ordinary burglar has when he breaks into a house at night with the preconceived design of stealing the property of its inmates. There is, as there ought to be in the absence of statutory enactment, a long distance between the act which is unauthorized and illegal, and which subjects the trespasser to civil liability, and the one which is legally wicked and criminal, and which subjects the offender to imprisonment. It is on this point of criminal intent that I think the district attorney has failed to furnish any evidence whatever on which the magistrate might act, although the burden affirmatively rested on him so to do. * * * If, in a suit upon a note the plaintiff relies for evidence upon the statement of the defendant that he gave the note, he must also accept the accompanying declaration that the note has been paid in full, and if this is all the evidence, the statement stands as a whole, and the proofs fail. * * *."

"In McCourt v. People, 64 N. Y. 583, the plaintiff in error stopped at a house and asked the daughter of the owner for a drink of cider, offering to pay for it. She refused to let him have it, and he thereupon opened the cellar door, and although forbidden to do so by her, went in and drew some cider. He was indicted for burglary and larceny, and it was held that the trial court committed error in refusing to direct his acquittal. It was said: 'Every taking by one person of the personal property of another, without his consent, is not larceny; and this, although it was taken without right or claim of right, and for the purpose of appropriating it to the use of the taker. Superadded to this there must have been a felonious intent, for without it there was no crime. It would, in the absence of such an

intent, be a bare trespass, which, however aggravated, would not be a crime. It is the criminal mind and purpose going with the act which distinguishes a criminal trespass from a mere civil injury.' And then, further, as applicable to the particular circumstances of that case, 'there was not only an absence of the usual indicia of a felonious taking, but all of the circumstances proved are consistent with the view that the transaction was a trespass merely. To find this transaction a larceny it is necessary to override the ordinary presumption of innocence, and to reject a construction of the prisoner's conduct, which accounts for all the circumstances proved without imputing crime, and to impute a criminal intention, in the absence of the earmarks which ordinarily attend and characterize it.'"

His Honor, Chief Judge Cullen, delivered the dissenting opinion, but notwithstanding, recognizes the principles which we are contending for, for he says (pp. 439, 442):

"But though there was an illegal misappropriation of the corporate funds by the relator, this does not necessarily prove that he was guilty of larceny. It may have been simply a trespass for which he is only civilly liable. I agree with Judge Gray that to constitute larceny there must be what is termed a felonious intent, but we do not make progress towards the determination of the question before us unless we ascertain what is a felonious intent. The question has given rise to much discussion in text-books and in judicial opinions. Whether 'intent' is the proper term to employ may well be gathered. Though a man may commit many statutory offenses unwittingly, no one can become a thief or embezzler accidentally or by mistake. To constitute the offense there must be in the perpetrator the consciousness of the dishonesty of the act. This, however, as frequently turns on the knowledge or belief of the party as to his authority as on his intent regarding the disposition of the property.

* * *

"It may be in the present case that the relator's character

> is so good, and his standing so high, that either on the examination or on the trial, it will seem clear that he could not have consciously and knowingly misappropriated the money of the company. It is also but fair to the memory of the president, who is now deceased, to say that it is entirely possible that his standing and character may appear to have been equally as good. The relator is entitled to the full benefit of the presumption arising from such character when presented at the proper place and before the proper tribunal. But, of course, nothing of that nature appears or can appear in the depositions on which the warrants were issued. However high the standing and character of the relator may be, it does not justify a departure in his case from the same orderly course of procedure in the administration of justice which would be followed in the case of the humblest citizen charged with an offense."

In other words, that that question was a question to be tried at the final hearing.

And Judge Werner, who also dissented, said (p. 445):

> "If the question were whether the relator's guilt of the crime of larceny, as charged in the information, had been established according to the immemorial rule which obtains in criminal trials, and which imperatively demands proof of guilt beyond a reasonable doubt to justify a conviction, I should unhesitatingly vote in the negative, for the evidence which the magistrate had before him when he was called upon to issue the warrant concededly falls far short of that standard. But that is not the question before us. The only question we are called upon to consider, and indeed the only one we have the right now to decide, is whether the evidence before the magistrate invested him with jurisdiction to issue the warrant."

But now we have before us the question which is so well stated in the opinion of Judge Werner. What, on the evidence, what on the proofs, is the conclusion to be reached in accordance with this immemorial rule of requiring proof of guilt beyond a reason-

able doubt? And as to which in that case the learned judge said: "At that stage of the case he would be compelled unhesitatingly to vote against the existence of guilt."

Whatever may be said by way of personal reflection, vituperation or condemnation of the respondent in connection with the receipt of these moneys, to say that he intended to steal them, that to the remotest extent he harbored a criminal thought, is to do violence to one's credulity. Reason, experience, justice and fair play stand aghast at the very suggestion of such a possibility.

It is well known that some of the greatest men in American history, who devoted their lives to politics in the best sense of that much abused term, were proverbially impecunious, in a state of perennial financial distress, and dependent largely upon gifts, loans and contributions to their friends and acquaintances, and of those who believed in them.

Daniel Webster and President McKinley were but two of many illustrations which might be presented. One might as well charge that the god-like Daniel was guilty of larceny because his admirers, seeking to help him in his career may have placed in his possession funds intended for that purpose, and which he scattered with spendthrift lavishness.

That Governor Sulzer had such admirers, men like Mr. Schiff, Mr. Morgenthau, Mr. Lehman, Dr. Cox, Judge Conlon, and others who have here testified, is established beyond a peradventure, and to intimate that the respondent, when he used the moneys which he received from any or all of these men, for his personal uses, did so with a criminal intent, is as cruel as it is ungenerous. Nothing but blind prejudice, uncontrolled passion and the most bitter hatred, can deduce criminal and larcenous intent from any of the acts charged against a Governor of the State of New York, a man who for twenty-five years was universally regarded as a faithful, useful and patriotic public servant.

We have now dealt with the charges which have been declared to be the very head and front of the respondent's offending. Upon analysis they vanish into thin air. They have no basis in law or in fact. They are not even charges of misconduct in office. On a trial before a regular tribunal adminis-

tering the criminal law, they would present no question to be passed on by a jury. This tribunal, however, is one which performs the double function of a trier of the law and a trier of the facts. In their determination William Sulzer, the Governor of the State of New York, is not so much on trial, as is the law itself. May it never be understood that in order to punish him, violence is to be done to the majesty of law and a stain imposed upon the pure garments of justice.

As collateral to the charges contained in Articles I, II and VI, are those set forth in Articles III, IV and V. The latter are founded on the former and are a mere outgrowth from them, a parasite, as it were. Yet, while it is believed that with the disposition of the primary charges, the secondary charges would be likewise disposed of, in view of the position taken by the Impeachment Managers with regard to these three charges, although they have been fully dealt with in the opening remarks of Senator Hinman, we will permit ourselves to deal with them further in order to demonstrate the weakness of the case of the prosecution and the unfair methods to which resort has been had in order to create an atmosphere of suspicion and prejudice about this case.

None of the acts charged in the articles now under discussion were official acts. None of them relate to any matter as to which the respondent was called upon to perform any official duty. They are all claimed to have been of a private and personal nature. They bear no relation to the performance of executive functions and I may therefore well urge that none of these acts comes within the letter or the spirit of section 12 of the Code of Criminal Procedure, which, as has been seen, defines the jurisdiction of this tribunal.

It certainly cannot be the law that the Governor may be impeached for violating any provision of the criminal law whether it be a misdemeanor, a felony or a violation of an ordinance. Otherwise he might be haled before this great tribunal on charges of impeachment alleging that he ran an automobile faster than 20 miles an hour. There must be some relation between the act charged and wilful and corrupt misconduct in office in the performance of his executive functions, not as an individual.

But we will not rest here, preferring to deal with the merits of these charges as we have with those which have already passed under review,— dealing with each of them separately in the order in which they are stated.

Article III charges the respondent with "mal and corrupt conduct" in his office (not wilful and corrupt misconduct in office), and bribing witnesses in violation of section 2440 of the Penal Law. It is stated that a committee was appointed by concurrent resolution of the Legislature to investigate into, ascertain and report at an extraordinary session of the Legislature upon all expenditures made by any candidate voted for at the last preceding election by the electors of the whole State, and upon all statements filed by and on behalf of any such candidate for moneys or things of value received or paid out in aid of his election, and their compliance with the requirements of law relative thereto; that while such committee was conducting its investigation the respondent in July and August, 1913, "fraudulently induced one Louis A. Sarecky, one Frederick L. Colwell and one Melville B. Fuller, each to withhold true testimony from the said committee," and which under said inducements of the respondent they and each of them refused to do; that in performing these acts the respondent acted wrongfully, wilfully and corruptly and was guilty of a felony.

Section 2440, under which this article purports to have been drawn, reads as follows:

> "A person who gives or offers or promises to give, to any witness or person about to be called as a witness, any bribe, upon any understanding or agreement that the testimony of such witness shall be thereby influenced, or who attempts by any other means fraudulently to induce any witness to give false testimony or to withhold true testimony, is guilty of a felony."

This article is very indefinite. It consists of the merest conclusion. It charges the respondent with bribing witnesses without stating which of the persons named in the article was bribed, or how he was bribed.

It is further alleged that the respondent fraudulently induced

them to withhold true testimony from the Committee. It does not state what fraudulent means were used. It does not indicate what the testimony was that was withheld. It is a generalization and nothing more, and gives no notice of the true charge which the respondent is to make with respect to the three individuals named in the article. The crime charged being a felony is subject to the same principles so far as intent is concerned which are applicable to the charges of perjury and larceny with which we have thus far dealt.

The article refers to bribing witnesses without stating how the witnesses were bribed. It then proceeds to say that he fraudulently induced Sarecky, Colwell and Fuller to withhold testimony. Under the statutory definition, the offense described in section 2440 of the Penal Law has to be committed by means of a bribe or an attempt by other means fraudulently to induce or withhold true testimony. These other means must exclude the idea of bribery. What they are is not stated.

But without dealing with this charge according to the strict rules of pleading which obtain in criminal proceedings, let us consider the evidence for the purpose of ascertaining whether there is any reasonable foundation for the charge with respect to either of the three individuals named.

One of the persons mentioned is Melville B. Fuller. Is there a scintilla of evidence to indicate that he was bribed or that any fraudulent means were adopted to induce him to withhold testimony from the Frawley Committee? He appeared before this Court and testified fully, freely and frankly in a manner which carried conviction to everyone who heard him. He was a man who showed himself jealous of his honor and of his integrity and his reputation. He brought with him all books and papers. He attended before the Impeachment Managers, out of Court, when he was not bound to do so, and disclosed to them his private books. He showed himself to be a high-minded gentleman, anxious to do naught which savored of unfairness, discrimination or favoritism.

When he first appeared before the Frawley Committee, acting on the belief which is shared by all stock brokers and bankers, that the business of their clients is privileged and that they are not bound to disclose it without the client's consent, he declined of his

own accord to answer the questions. He came to Albany, stated the situation to the respondent, who incidentally informed him that he had been advised, that the Committee had no power to carry on its investigations. The respondent made no suggestion or anything which savored of an intimation that Mr. Fuller should refuse to testify, and later, Mr. Fuller in fact, with the affirmative consent of Governor Sulzer, testified before the Frawley Committee fully and completely with regard to all of the transactions between the respondent and Harris & Fuller.

At that time, it appears from the record, page 968, Judge Olcott, who was the personal counsel of Mr. Fuller, appeared with him before the Frawley Committee and said — This has already been read to this Court, but nevertheless, in view of the nature of the charge which was made, and which has not been withdrawn, which still is before this Court for determination, I feel that I should again call attention to what took place, as an indication of the manner in which these prosecutors are conducting this case.

> "I was not present at the hearing before. Before you proceed with his examination, through your own already expressed courtesy of the Commission and that of Mr. Richards, I want to say a word on the subject of his refusal to answer questions the other day, and the fact that he now presents himself ready to answer all questions which are asked. His refusal the other day was based upon the custom, which is to them a law and a moral right of brokers, never to reveal any of their books so far as their customers' accounts are concerned. Since that, we have had a conference with Governor Sulzer and his representatives, and the Governor agrees that without further contest, without any contest on his part, that Mr. Fuller's lips should be unsealed. Now, having that waiver from the customer, Mr. Fuller feels at liberty to answer your questions. I thank you for the privilege of this statement of his position in the matter."

Thereupon Mr. Fuller presented to the Frawley Committee every book, paper and document that it desired. Some of them were examined by the committee at that time, as fully as it desired. The witness answered fully and frankly all questions

put to him, and furnished them with a transcript of the account of Governor Sulzer.

If it is possible to spell from this testimony any bribery or attempted bribery, or any other fraudulent means to induce the witness to withhold testimony, then like Alice in Wonderland, we are groping amid the obfuscations of topsy turvy land.

And yet for some mysterious reason this witness was subjected to the most extraordinary treatment. The book which he produced was passed from one member of this Court to another with all the theatrical concomitants of the melodrama except slow music. It was intimated that the books had been "doctored," fraudulently altered and forged. Mr. Fuller thereupon demanded the right and the privilege of protecting his reputation and his character against these insinuations and innuendoes and stated that he had concealed nothing and had nothing to conceal, that his books were absolutely correct, that no balances had been forced, that there had been nothing omitted or concealed to protect Governor Sulzer or anyone else and indicated his perfect willingness to bring his books to the Court, and to bring every clerk in his office, to prove the correctness of his statement. (Record, pages 1022, 1025.)

It was a pathetic scene of a man trying and struggling before this High Court to maintain his dignity and his honor before the people of the State.

Two days later the impeachment managers were forced to absolve Mr. Fuller from the unworthy suspicions for which they were responsible. (Record, page 1098.) We may therefore discharge from further consideration any suggestion of wrongdoing with respect to the testimony of Mr. Fuller.

The President.—Have you ended with reference to that account?

Mr. Marshall.— Yes.

The President.— We will suspend now.

Mr. Todd.— May it please the Court, the Managers have prepared an index a little more complete than the one which has been prepared for us. With the permission of the Presiding

Judge, we will have them placed in the covers with the testimony this noon.

The President.— Show them to your opponents and see if they make any objection; if not, it will be done.

Mr. Todd.— Is there any objection to having that done?

Mr. Herrick.— No.

The Crier.— Hear ye, hear ye, hear ye, this Court will now take a recess until 2 o'clock this afternoon.

Thereupon, at 12:30 o'clock P. M. a recess was taken until 2 P. M.

AFTERNOON SESSION.

The Crier.— Judges of the Court of Impeachment.

The President.— Call the roll.

The Clerk thereupon called the roll and found a quorum present with the following absentees:

Senator Fitzgerald.
Judge Gray.

The Crier.— Hear ye, hear ye, this Court now resumes its session from recess.

Mr. Marshall.— Continuing the discussion of Article III of the impeachment articles, I now come to a consideration of the charge with regard to another of the persons named in the article, Frederick L. Colwell. There is absolutely no evidence in the record of any conversation, communication — oral or written — between the respondent and Colwell with respect to the giving or withholding of any testimony from the Frawley Committee, or with respect to his testifying or not testifying before that Committee. The only evidence in the record relating to Colwell is that he gave orders for the purchase of stock and paid for stock to the firm of Harris & Fuller and Boyer, Griswold & Company.

The witness John Boyd Gray testified that Colwell lived at Yonkers in a house rented from him; that he last saw him at 71 Broadway about the middle of August; that at that time Colwell said to him that he was going to Albany; that he did not say how long he was going to remain away; that he had called up his house and asked to have his luggage brought to the Yonkers station; that he took a northbound train; and that he said he was going to see William Sulzer. There is absolutely no other testimony in the record with regard to Colwell, nothing even to show that he made any default in appearing before the Committee, or that he had refused to yield obedience to any subpoena served upon him, or to answer any questions put to him. His statement to Gray that he was going to Albany to see William Sulzer is the merest hearsay and is not binding in any way on the respondent. To argue from this bare statement that the respondent bribed the witness or used any fraudulent means to induce the witness to withhold any testimony from the Committee, is so farfetched as not to merit being dignified by the term argument. It is a bald guess, a violent conjecture, and an ungrounded suspicion.

Inference and surmise are not permitted to take the part of proof, even in a civil proceeding. To hint at the possibility of employing them in a criminal proceeding is monstrous. The very fact that the prosecution is driven to such straits is the strongest evidence of the weakness of their position. Time was when prosecuting officers were considered as quasi-judicial, and when they felt it incumbent upon themselves to move for the dismissal of an indictment of a prosecution where there was no legal evidence, or not sufficient evidence to warrant the submission of a case to the determination of the tribunal before which it was to be tried.

We have fallen upon other days. Anything which is sufficient to lay the basis for a newspaper headline, an inflection of the voice, a lifting of the eyebrow, a shrug of the shoulder, a confidential whisper, seems to be sufficient for the destruction of a reputation and the ruin of an honorable career. This was the method pursued by Iago for the purpose of arousing the jealousy of the credulous Othello, which led the poet to exclaim, " Trifles light as

air are to the jealous confirmation strong as proof of holy writ." It is the method pursued by the slanderer and the backbiter, and which, if indulged, will subject any member of the body politic, and especially every holder of public office, to unspeakable perils.

Rumor with her thousand tongues is ever ready for mischief and he is indeed a fortunate man whom a kindly Fate has spared from her withering blasts.

An entire absence of testimony is now sought to be made the equivalent of the most cogent proof, and where the law requires proof beyond a reasonable doubt, the absence of a single legitimate fact upon which reason can operate is to be made a substitute for that rule which the wisdom of the past has evolved as a safeguard of the liberty of the citizen.

In this connection it will also be useful to remember, as reflecting upon the methods of the prosecution, that it was pretended that the witness, John Boyd Gray, could not be found, and Mr. Beale, his counsel, was on the witness stand. Questions were put to him to indicate that the whereabouts of Mr. Gray were shrouded in mystery. Mr. Beale showed that Mr. Gray was daily at his office transacting business, that he had seen him there and talked with him there, and Mr. Gray came and testified, and it appeared that he had not even been subpoenaed — he had not been requested to appear. The mere suggestion of the desire that he should be present was sufficient to induce the witness to come unsubpoenaed. That there was no desire on the part of anybody to keep him away was shown by the answers to the questions put to the witness by Senator Brown (record, page 1089):

> "Q. Have you avoided the service of process for the purpose of avoiding an appearance here? A. No.
>
> "Q. Have you been requested not to appear here if you could avoid it? A. I have not.
>
> "Q. Have you had any communication from Governor Sulzer or any other person about not appearing? A. I have not.
>
> "By Senator Pollock:
>
> "Q. When did you first learn that your appearance in this Court was desired? A. Oh, I heard of it indirectly several days ago.

"Q. Through whom? A. Why, through several sources, I guess.

"Q. Did you receive any communication from the Impeachment Managers or their counsel? A. I did not."

The third witness referred to in this article is Louis A. Sarecky. It was shown that he appeared before the Frawley Committee, and from the proceedings of that committee the prosecution read some of the questions and answers given by the witness, which merely indicated that the witness under the circumstances stated he would not testify unless he was permitted to have counsel present in order to bring out all the facts on both sides and not to give a colored statement. And even then he showed clearly that he did not refuse and did not intend to refuse to testify.

I will briefly read from the record on that point and invite your Honor to read the entire testimony which was read from the proceedings of the Frawley Committee with regard to that. This part of the testimony was not brought out by the prosecution. It was left to the cross-examination to bring it out. Mr. Sarecky testified as follows:

"A. Now, gentlemen, I want to make a statement on record before I testify further. If you are delving into the Governor's campaign expenses, I am willing to tell everything, on condition that I be represented by counsel, because if the story is to be told, I want both sides told."

Then the Chairman interrupted him by saying:

"Mr. Sarecky, if Mr. Richards asks you any question that you feel you won't answer; you have a right to refuse."

Then the witness replied:

"I feel that the committee has absolutely no authority at all to conduct the investigation."

"A. I refuse to answer that question and all other questions pertaining to the Governor's campaign fund, unless I am permitted to be represented here by counsel, who will bring out the whole story and not one side of it, and he will give me full opportunity to explain any items that it may appear doubtful on the face of it."

That was his testimony, and that was the position which he assumed, which was not a position that he would refuse to answer. He merely asked that he should have counsel, that there should be an opportunity of counsel being present, and he was told by the chairman of the committee if he did not want to answer the questions he had the right to refuse to answer.

The testimony in regard to his refusal to testify before that committee, given by him on his examination before this Court, is fresh in the minds of the Court, and within the time given us I will not stop to read it. I am obliged to hurry on.

But I suggest that there is nothing in that record which does not indicate that Sarecky was entirely willing to testify; that there was no attempt made by anybody and no direction from anybody to interfere, and that the respondent here did in no manner interfere or try to interfere, or try to induce him not to testify.

There is absolutely nothing to indicate that Sarecky's refusal to testify was based on any instruction, advice or action of the respondent. In fact, the witness expressed his willingness and his desire to answer all questions. All that he asked was that he should have the privilege of being represented by counsel so that the entire story might be given without discoloration, and he might have an opportunity to explain. In fact, the chairman of the committee informed the witness that if the counsel to the committee asked him any question which he felt he did not wish to answer he had a right to refuse.

Those who are familiar with the methods of investigating committees will recognize that there is generally an idea of bringing out half truths, of suppressing facts, by not telling the whole story. That is true with regard to all committees. I don't mean to say that they do this always with a wrongful intention, but it is the natural thing.

At all events the witness did not intend to be understood as refusing to answer questions. He merely sought protection against being put in a false position and being required to make a garbled and incomplete statement of facts. But it is a far cry between a witness' refusal to testify under the conditions stated and the criminal agency of the respondent to induce him to withhold true testimony from the Committee.

No effort was ever made to call him again, either before the Committee or before the Assembly, but it is claimed, nevertheless, that Governor Sulzer bribed Sarecky into a refusal to testify by procuring his appointment as a lay deputy in the Bureau of Deportation of Alien Insane.

If the respondent bribed this witness, this amounts to a charge not only that the respondent was a briber, but that Sarecky was bribed. This is certainly a most serious charge. It is not to be dealt with lightly.

Strong and incontrovertible testimony is the least that should be required at the hands of the Impeachment Managers for its establishment. How has this burden been sustained?

It was asserted by their counsel that Sarecky had been appointed to be a deportation agent in place of a physician, and that this appointment constituted a bribe. It was shown that Sarecky had previously been confidential stenographer to the Governor. He had resigned as such on June 18, 1913. He had been in the Governor's employ for many years. He had indicated intelligence and competency, and it was but natural that the Governor should not interpose any obstacles to his advancement.

On July 23, 1913, the State Hospital Commission communicated with the State Civil Service Commission, requesting in the letter to suspend the rule requiring examination in the case of Louis A. Sarecky for appointment to the position of lay deputy in the Bureau of Deportation, at an annual salary of $4,000. The Hospital Commission, in its communication, said:

> "Q. Mr. Sarecky is a person of high attainments and possesses qualifications which will make him a useful member of the force. He masters five modern languages and also knows the jargon of the different races and nationalities contributing to our hospital population."

On the following day this communication was acknowledged.

On July 30th the State Hospital Commission presented another communication to the State Civil Service Commission with respect to the position of lay deputy in the Bureau of Deportation, asking that it be classified in the exempt class under the civil service rules. It was stated that competitive or non-

competitive examination was not practicable for filling the position, because an immediate appointment was necessary, and because of the extraordinary need of assistance in the Bureau; that there was no eligible list from which such lay deputy could be appointed; that the Commission desired to appoint Louis A. Sarecky, who was familiar with the work of the Bureau and had become specially equipped as an investigator in some of the difficult fields to which he would be assigned to work on the Hospital commission, that peculiar and unusual qualifications of an educational character were required for the position, and that Sarecky was a linguist who commanded five modern languages and knew the jargon of the different races or nationalities contributing to the hospital population.

On July 30th, the Commission, subject to the approval of the Governor, placed in the exempt class the position of lay deputy, Bureau of Deportation. The State Civil Service Commission reported this action, and the Governor approved of the action of the Commission, and thereupon, on July 18, 1913, the State Hospital Commission appointed Sarecky as a lay deputy, at a salary of $4,000 per year.

The State Hospital Commission consists of public officers of high standing. The State Civil Service Commission likewise consists of three public officers of unimpeached character. Both of these Commissions co-operated in the official action which was taken. It is not to be presumed that any of these high officials violated his oath of office or acted otherwise than in accordance with his best judgment and for the best interest of the State. The responsibility for any appointment that was to be made rested on the Board of Hospital Commissioners. The responsibility for the enforcement, according to its true spirit, of the Civil Service Law rested on the Civil Service Commission. It is not pretended that Governor Sulzer communicated with any one of these officials or used his influence with them in any way or urged them to do aught which they did not consider to be consonant with their public duties. The appointment was theirs.

The determination as to the fitness of Sarecky rested upon them and yet in spite of the legal presumption in favor of the honesty and propriety of official action, these public officers are practically

charged with having entered into a conspiracy to enable the respondent, through their agency to bribe Sarecky, their appointee. This is piling suspicion on suspicion's head, vaulting conjecture that overleaps itself.

But the unfairness of our opponents does not stop here. They have pretended that a physician was removed for the purpose of making a place for Sarecky, and the duties which he was called upon to perform were those of an expert medical character. This is not true. Section 7 of chapter 121 of the Laws of 1912, which amends the Insanity Law, provides:

> "There shall be established by the commission (The Commission in Lunacy) a Bureau of Deportation for the examination of insane, idiotic, imbecile and epileptic immigrants and alien and nonresident insane, and to attend to the deportation or removal thereof, which shall consist of a medical examiner and such number of medical or lay deputies as may be necessary, to be appointed by the commission."

The duties of these deportation agents were to see to it that such aliens who were found to be insane were to be deported from this State and returned to their friends or relatives in the countries whence they had come. This requires medical men, in the first instance, to determine the fact of insanity and laymen, in the second instance, to attend to the physical act of deportation. That requires men who are able to converse with the insane aliens, to make investigations as to their place of origin, to communicate with their relatives and friends, so that the poor unfortunates might not be set adrift without regard to their fate; it requires a knowledge of languages and the possession of tact as well as a pleasing address, coupled with the ability to make investigations of the character indicated — these are the important qualities required for such a lay deputy.

That Sarecky possessed them to a high degree is not only indicated by his testimony but by the manner in which he has testified before this Court. Never has there been a civil service examination so searching, so painstaking, so thorough as that to which the witness was subjected at the hands of that master of the art of cross-examination, Mr. Stanchfield, and I leave it to this Court to

determine whether that young man did or did not pass a satisfactory examination as to qualifications, as to abilities, linguistic and otherwise. He indicated that he possessed the linguistic qualifications necessary, and that he thoroughly understood the nature of the duties which devolved on him, and possessed the sympathy that was necessary for the charges to whose welfare he was obliged to attend.

There never was a criticism more unjust than that which has been directed to this very worthy and conscientious young man, whose whole life has been displayed to you, who has been subjected to an examination in which the examiner, astute though he is, was unable to indicate the slightest rift in his armor. The public service of the State has profited by his accession to its ranks. How many are there among our public officials to-day who are his equal in intelligence? That does not, however, seem to exempt him from the charge of criminality. Whoever stands between those who are egging on this prosecution and the accomplishment of their fell purpose must be stricken down and the chariot of the avenger is driven over his prostrate form. Their artistic sense demands the creation of an atmosphere, mephitic or otherwise, and they have not spared pains to create it in the Court and out of Court, in the corridors and in the lobbies and on the streets.

The prosecution filled the air with whispers, which presently became translated into flaring headlines, that Sarecky had fled from the jurisdiction of this Court in order that he might not be compelled to become a witness on this trial. While these publications appeared Sarecky was engaged in the proper performance of his duties, either at his official post in Albany, at Buffalo, or at New York, wherever his duties called him. There has not been a moment when his whereabouts were not thoroughly known to his superior officers. No attempt whatever was made to conceal his presence, and at the very time when, with theatric effect, it was intimated that he could not be found, he was practically within the presence of this Court.

So much for the charges of bribery, and of the use of fraudulent means for the suppression of testimony! If the rules which apply to criminal proceedings were to receive the force to which they are here entitled, the charges contained in this article have woefully and dismally failed.

The fourth article charges the respondent with the misdemeanor of suppressing evidence, and of a violation of section 814 of the Penal Law of the State, in that the respondent "practiced deceit and fraud, and used threats and menaces with intent to prevent said Committee and the people of the State of New York from procuring the attendance and testimony of certain witnesses, to wit, Louis A. Sarecky, Frederick L. Colwell and Melville B. Fuller, and all other persons, and with intent to prevent said persons named, and all other persons, severally, they or any of them having in their possession certain books, papers and other things which might or would be evidence in the proceedings before said (Frawley) Committee, and to prevent such persons named and all other persons, they, severally, being cognizant of facts material to said investigation being had by said Committee, from producing or disclosing the same, which said several witnesses named, and many others, failed and refused to do.

Section 814 of the Penal Law reads as follows:

> "A person who maliciously practices any deceit or fraud, or uses any threat, menace or violence, with intent to prevent any party to an action or proceeding from obtaining or producing therein any book, paper or other thing which might be evidence, or from procuring the attendance or testimony of any witness therein, or with intent to prevent any person having in his possession any book, paper or other thing which might be evidence in such suit or proceeding, or to prevent any person being cognizant of any fact material thereto from producing or disclosing the same, is guilty of a misdemeanor."

Here, again, the articles deal in mere generalities. There is no statement as to what deceit or fraud is claimed to have been practiced, what threats or menaces were employed, what books or papers were to be eloigned, what facts were to be concealed. So far as Sarecky, Colwell and Fuller are concerned, all of the evidence relating to them has already been fully considered. It is difficult to conceive of any deceit or fraud which the respondent practiced upon these persons, or upon any person, to prevent them from testifying. The evidence positively shows that he did noth-

ing whatever except to express his entire willingness that Fuller should testify, without qualification or reserve.

The case is entirely barren of even the suggestion that threats or menaces of any kind were employed to compass the suppression of testimony, or for any other purpose. The record is blank so far as this point is concerned. It is practically impossible to argue a negative where there is no testimony. There is nothing to discuss. What the draftsman of these articles may have had in mind, it is impossible to imagine. The charge that the respondent practiced deceit and fraud, and used threats and menaces to prevent the free persons named, "and all other persons," from testifying, reduces the entire proposition to an absurdity. "All other persons" means everybody, the members of this Court, the entire public. What is this deceit and fraud? What are these threats and menaces, of so all-embracing a character?

The fifth article charges the respondent with a misdemeanor in violation of section 2441 of the Penal Law, it being charged that the respondent wilfully prevented and dissuaded Frederick L. Colwell, who had been duly summoned or subpoenaed to attend as a witness before the Frawley Committee, from attending pursuant to said summons or subpoena, and that in so doing he acted wrongfully, wilfully and corruptly.

Section 2441 of the Penal Law reads as follows:

> "A person who wilfully prevents or dissuades any person who has been duly summoned or subpoenaed as a witness from attending, pursuant to the summons or subpoena, is guilty of a misdemeanor."

Here, again, we are called upon to argue from a blank record. There is not a word of proof, either oral or documentary, direct or circumstantial, proximate or remote, which indicates that the respondent lifted a finger or uttered a syllable for the purpose of preventing or dissuading Colwell, the only person named in this article, from attending as a witness before the Frawley Committee. When this is said, there is nothing to add.

Although there is nothing in any of the articles which relates thereto, for want of a better occasion to discuss the matter, we

may now address ourselves to the testimony of Duncan W. Peck, which has been discussed through the lobbies and the corridors, and has been much heralded as the most significant piece of testimony which the impeachment managers have produced. It is not made the subject of any charge. It is not referred to in any of the articles.

It is very unpleasant and disagreeable for me to discuss this testimony, because I have known Mr. Peck from boyhood, but, however unpleasant the task may be, I shall not shirk it.

Under the ruling made by the Court, that other contributions than those specifically mentioned might be proven, Peck testified that, at the Rensselaer Inn, in Troy, at the time of the holding of a political ratification meeting before election in 1912, he met the respondent and said, "Governor, I would like to give you this for your campaign," and he thereupon gave him a $500 bill. Whereupon he received thanks, and added: "I said there were no strings on it and he need not feel at all obligated to reappoint me," referring to the fact that he was at that time Superintendent of Public Works. The examining counsel then asked:

"Q. Since that have you had any conversation with the respondent, William Sulzer, in reference to that contribution? A. That was a confidential conversation."

The members of the court will recollect that the witness thereupon turned to the President, and, in a tone of despair, said, "Must I give it?" Whereupon the President very naturally replied, "Yes, you must give it. The testimony then proceeds:

"Q. State the conversation, first stating when it was and where it was? A. I don't know when it was. It was somewhere after the 19th of July in the Executive Chamber."

* * * * * * * * *

"Q. Now, state the conversation? A. I had received a communication from the so-called Frawley Committee.

Q. A letter? A. A letter.

Q. Have you that letter? A. No, I have not.

Q. Have you been able to find it? A. I have not.

Q. What is the substance of that letter?

The President.— The point is what passed between him and the respondent.

Mr. Todd.— If your honor please, it has to do as I understand with what had passed between them.

The President.— When that appears you can go back to it.

Q. Did you show this letter to the respondent, William Sulzer? A. I did.

The President.— Now you can go back to it.

Q. Will you state the substance of that letter? A. Why, it was a request to state what donation, contribution I had made; and whether a check or otherwise, and I don't remember all of it, but that was the gist of it.

Q. To produce and give that information to whom? A. To this committee.

Q. The Frawley Committee? A. Yes, sir.

Q. Now state the rest of the conversation. A. I showed the letter to the Governor and asked him what I could do about it.

Q. What did he say? A. He said: 'Do as I shall; deny it.'

Q. What else was said if anything? A. Why, I said, 'I suppose I shall be under oath.' He said: 'That is nothing. Forget it.'

Q. Was there any thing else said? A. Nothing more."

On his cross-examination he stated that he had made no memorandum of his conversation with the Governor, that he was giving the exact language, word for word.

"Q. You cannot be mistaken as to a word? A. No.

Q. Not in a word said by him or a word said by you? A. Not that conversation.

Q. Not a word? A. No, sir."

Intrinsically this testimony does not bear the ring of truthfulness. I will not stop to comment on the fact that he addressed the respondent as "Governor" long before election, but will proceed to that part of his testimony which relates to his alleged conversation in the Executive Chamber.

He tried to impress the Court with the idea that he was loath to testify, that the conversation was a confidential one. Although he must have known that he would have to testify, he went through the mockery of appealing to the court to protect him against divulging confidential conversation. But as soon as

the direction was given that he should answer, he proceeded forthwith to tell his strange tale. Mr. Todd, the examining counsel, seemed to be entirely familiar with it. He knew all about the alleged letter. He knew where to begin and where to stop. He was entirely familiar with all of the twists and turns of this confidential conversation. What psychic phenomenon is responsible for the transmigration from the recesses of Peck's brain into those of Mr. Todd, of this secret, confidential conversation, which Peck was shocked to narrate, and which only passed the portals of his lips when his appeal to be relieved from the betrayal of this confidence had been rudely shattered?

If Peck had not attempted this by-play, his testimony would not have so much savored of a brazen counterfeit and of hypocrisy. As it is, however, that histrionic display deprives his entire story of lifelikeness, the hesitating manner suddenly disappears, and without prompting of any kind, he glibly proceeded with his narrative.

It is peculiar that, although the records of the Frawley Committee were at the disposal of the Impeachment Managers, a copy of the letter which is claimed to have been written to the witness, and to have been shown to the respondent, was not produced. It is equally significant that this witness, who was so anxious to avoid the disclosure of a confidential communication, was so entirely sure of the exact language used in that conversation, that he is ready to swear that he repeated it word for word, that he was not mistaken as to a single word uttered either by Governor Sulzer or by him. Though men gifted with the most extraordinary memories are unable, after the lapse of two months, to repeat conversations word for word, this man has no hesitation in declaring his ability to do what is practically impossible, as any member of this Court knows from his own experience.

It is also significant that this witness was not called before the Frawley Committee, although it is pretended that he had been the recipient of a communication from it, and there is no explanation why he was not so called.

But contemporaneous public history affords a further reason why this testimony should be carefully analyzed, and not accepted at its face value. Peck had been appointed Superintendent of

Public Works by Governor Dix. He was reappointed by Governor Sulzer. In 1912 he was ex-officio a member of the Highway Commission. He therefore had to do with the letting of highway contracts.

As Superintendent of Public Works his duties involved supervision of the canals, and of contracts made for work upon them. At about this very time Mr. Hennessy, the investigator of the public departments of the State, which included the Highway Department and the Canal Department, was unearthing irregularities of a very serious nature in both of these departments, had under examination various subordinates of Peck, and had in his possession proofs to establish his unfitness for the office which he was occupying, as well as his complicity in irregularities which were quite likely to receive ventilation before the public tribunals of the State.

Governor Sulzer was familiar with the line of inquiry which Mr. Hennessy had instituted. So was Peck. While, under the circumstances it would have been the most unnatural thing in the world for Governor Sulzer to have made to Peck the suggestion to which the latter has testified, for Peck would have been the last man in the world into whose power he would have placed himself at that time, Peck had a strong motive for inventing such a conversation as that to which he has testified, because it would enable him to aid in the destruction of the man who had set in motion the investigation which threatened not only the office which he held, but his very liberty.

The testimony of Mr. Morgenthau when recalled, to the effect that the respondent called him upon the telephone on the evening of September 2, 1913, and asked him to be "easy" with him, and suggested that his contribution was a personal matter, is scarcely worthy of a second thought. It was but natural in view of all the outcry that had gone forth against the Governor, and the representations that had been made concerning him, the false light in which he was sought to be placed, that he should appeal to Mr. Morgenthau not to join in the hue and cry of his enemies.

There is scarcely a man who would not, under like circumstances, make such an appeal. The suggestion that the contribution from Mr. Morgenthau was a personal one, was certainly

not the suggestion of a falsehood, because Mr. Morgenthau, in so many words, testified that there was no limitation placed upon the use to which his gift was to be applied, and that he did not intend to limit him as to such use, at page 528 of the record. So what is there in this conversation except to bring out the very fact that was testified to?

It is very evident that this testimony was injected into the case for the purpose of creating distrust of the Governor, of reflecting upon his honor, of casting a doubt upon his credibility; just as the testimony of the witness Allan Ryan was introduced for a like purpose — even though the testimony of neither of these witnesses possessed the slightest probative force with respect to the establishment of a single one of the articles of impeachment which have been filed against the respondent.

The Impeachment Managers, however, consider this a "good enough Morgan;" it is sufficient foundation for all kinds of concoctions and theories, which pass from mouth to mouth, and grow in magnitude with every utterance; all in the hope that, however weak the evidence on the articles of impeachment may be, by some esoteric course a sentiment may be created which may accomplish, by indirect appeal, that which the evidence, upon which the impeachment is to be heard, tried and determined, does not warrant.

There remain to be considered Articles VII and VIII. The first of these charges the respondent with a violation of section 775 of the Penal Law, in that he promised and threatened to use the authority and influence of his office as Governor for the purpose of affecting the vote or political action of Assemblyman Prime and Assemblyman Sweet. The section by which this charge is claimed to be governed, reads as follows:

> "Sec. 775. Corrupt use of position or authority. Any person who:
>
> 1. While holding a public office, or being nominated or seeking a nomination or appointment therefor, corruptly uses or promises to use, directly or indirectly, any official authority or influence possessed or anticipated, in the way of conferring upon any person, or in order to secure, or aid any person in securing, any office or public employment, or any

nomination, confirmation, promotion or increase of salary, upon consideration that the vote or political influence or action of the person so to be benefited or of any other person, shall be given or used in behalf of any candidate, officer or party or upon any other corrupt condition or consideration; or,

2. Being a public officer or employee of the State or a political subdivision having, or claiming to have, any authority or influence affecting the nomination, public employment, confirmation, promotion, removal, or increase or decrease of salary of any public officer or employee, or promises or threatens to use, any such authority or influence, directly or indirectly to affect the vote or political action of any such public officer or employee, or on account of the vote or political action of such officer, or employee; or,

3. Makes, tenders or offers to procure, or cause any nomination or appointment for any public office or place, or accepts or requests any such nomination or appointment, upon the payment or contribution of any valuable consideration, or upon an understanding or promise thereof; or,

4. Makes any gift, promise or contribution to any person, upon the condition or consideration of receiving an appointment or election to a public office or a position of public employment, or for receiving or retaining any such office or position, or promotion, privilege, increase of salary or compensation therein, or exemption from removal or discharge therefrom,

Is punishable by imprisonment for not more than two years or by a fine of not more than three thousand dollars or both."

This section can be read and reread, and twisted and contorted to one's heart's content, without disclosing that it has even the most remote application to the matters alleged in this article. Each of its subdivisions refers to the taking of money by a public officer with respect to " conferring upon any person, or in order to secure or aid any person in securing, any office or public employment, or any nomination, confirmation, promotion or increase in salary,

upon consideration that the vote or political influence or action of the person so to be benefited or of any other person, shall be given or used in behalf of any candidate," etc. All of these provisions relate to the exercise of influence as affecting a nomination, public employment, confirmation, promotion, removal, increase or decrease of salary, of a public officer. The charges cannot be fitted so that one can be applied to the other.

Mr. Prime testified that he had introduced in the Assembly two acts in relation to the building of highways in the counties of Essex and Warren, during the regular session, one re-appropriating an unexpended balance of $750,000 for the construction of highways and the other authorizing the construction of two new State roads in these counties. Both bills passed the Senate and came before the Governor for signature. There was a question as to whether the bills were to be paid out of the $50,000,000 fund raised by the issue of bonds or out of the annual appropriation. In fact they were covered by the $50,000,000 appropriation. Mr. Prime, together with Senator Emerson and Mr. Cameron of the Attorney General's office, called upon the Governor and conversed with regard to these bills and asked the Governor to sign them. Incidentally the Governor, who was very much interested in the Direct Primary bill, discussed that bill with his visitors, and sought to enlist their interest in it. He casually remarked, "You for me, and I for you." The highway bills were not only passed by both houses of the Legislature, but their subject was at the Governor's request specially investigated by Mr. Carlisle, the Highway Commissioner, who approved of them, and upon his recommendation they were signed by the Governor on June 2, 1913, and are now chapters 785 and 786 of the Laws of 1913. The extraordinary session of the Legislature did not convene until later.

Is it intimated by our opponents that Senator Emerson and Assemblyman Prime considered themselves as being improperly approached by the Governor when he asked them to consider favorably the Direct Primary measure? Has the time come when the Governor may not discuss legislation of State interest with members of the Legislature, without subjecting him or them to unworthy suspicion. Is there any malign significance to be attached to the phrase "You for me, and I for you"? No promise of

favorable action on the Direct Primary bill was given; none was exacted; it could not have been a threat that the Governor would veto the measures in which these legislators were interested. As matter of fact, without further parley and solely on the recommendation of a high official of the State, the bills became laws.

There is nothing in law or in morals which can condemn the Governor, or the gentlemen with whom he conferred, for indulging in this harmless conversation? Is there something so deterrent in the idea of a direct primary which makes it criminal for the Governor of the State, who is carrying out the behests of his party platform, to urge members of the Legislature to give to it their support? If this can be said to be an impeachable offense, then the executive officers of the Nation and of the States will find themselves in the midst of perpetual alarms, and the public service would inevitably suffer. We read from day to day the headlines in newspapers as to what is going on in regard to important legislation in the Nation and in the States. Surely, if Governor Sulzer is to be impeached in this case, why, there are others who will follow in the procession.

The testimony of Mr. Sweet is equally trivial. (See Rec. pp. 876, 879). Here the Governor, acting in accordance with what he believed to be his duty, vetoes a bill which provided for an appropriation of the funds of the State for the construction of a bridge. In this conversation the Governor likewise referred to his Direct Primary bill, and asked the Assemblyman how he expected to vote at the extraordinary session, to which he replied, "According to the sentiment and the interests of my district." The Governor then laid his hand on the arm of the Assemblyman, and said: "See Taylor and smooth him the right way." Taylor was the counsel to the Governor, who passed on bills which required executive action.

If this were not an impeachment proceeding such charges, instead of being seriously discussed, should evoke Homeric laughter. If this Court should seriously consider them, assuming even for the sake of the argument that there is any permissible theory of interpretation which could make section 775 of the Penal Law applicable to this case, the communications between our future Governors and our members of the Legislature, would have to be

"Yea, yea" and "Nay, nay." Anything more might mean impeachment.

The eighth article is, if possible, even more contemptible than that which has just been considered. It required a peculiar mind to frame it, and a morbid intellect to discover in the evidence adduced, a single circumstance which brings the case within section 775 of the Penal Law, under which it was framed, or the slightest relation of cause and effect between the ownership of shares of stock by the Governor and his advocacy of measures relating to the sale of securities on the New York Stock Exchange. I will not read that article. I refer you to the printed record.

In order to establish this charge there was introduced in evidence a message of the Governor urging the passage of legislation relating to the stock exchange. A number of bills were drafts under his supervision, and were introduced to carry out his recommendations. A number of them were passed by the joint action of the Senate and the Assembly. Chapter 236 of the Laws of 1913 was one of them. This amended the Penal Law in relation to bucket shops. Chapter 253 was another. It amended the Penal Law in relation to the manipulation of prices of securities and inspiring movements to deceive the public. Chapter 475 was another. That was an act to amend the Penal Law in relation to reporting or publishing fictitious transactions in securities. Chapter 500 related to transactions by brokers after insolvency in respect to the hypothecation of customers' securities.

The bills which were not passed related to various abuses which had been considered, not only by a commission appointed a number of years ago by Governor Hughes, but by a Congressional committee which had made an exhaustive study into Stock Exchange conditions.

If the Governor, in recommending this legislation, was guilty of wrongdoing, then the Legislature, in passing five of the bills which he recommended, was acting equally in hostility to the public interest, and so were the various public bodies which approved of some or all of these bills.

But it is said that Governor Sulzer committed a wrong in recommending these bills, because he was the owner of shares of stock which were dealt in on the Stock Exchange. Also the

shares of stock which it is claimed that he owned or had an interest in are those which are included in the Harris & Fuller, Boyer, Griswold & Co. and Fuller & Gray accounts. All of these represented actual, outright purchases. They were not margin transactions. They were in no sense speculative accounts. But even if they had been, what would it have mattered? Has it come to the pass when a Governor of this State has no right to be the owner of shares of stock which happen to be quoted on the Stock Exchange? Within the last twenty years we have had two Governors who were bankers and whose dealings in shares of stock presumptively were very extensive, Governor Flower and Governor Morton. Would it have been improper for them to have suggested legislation intended to regulate transactions in securities? The very formulation of a doubt is preposterous.

But, if possible, the absurdity of the contention of the Impeachment Managers reaches sublimity, when one considers that the anticipated effect which regulation of the Stock Exchange and of speculation in stocks could have, would be to reduce the price of stocks. Inasmuch as Governor Sulzer is claimed to have been the holder of shares of stock which were bought and paid for, is it conceivable that he should have recommended this legislation for the purpose of reducing the value of his own investments?

I have not the patience to pursue this subject further. It is unworthy of this presence. It is an insult to the intelligence of this Court, as it is to the people of this State. Instead of recognizing this fact, the Impeachment Managers have not hesitated to go into elaborate proof on this subject, to encumber the record with numerous exhibits, avowedly for the purpose of establishing this contemptible charge.

What is the inference to be derived from such procedure? Are the Impeachment Managers in earnest? Are they treating the Court with that degree of candor which one may expect in such a case as this? If they are, then it is a demonstration that, in their attempt to destroy the Governor, they have lost all sense of proportion, and that they consider that everything is grist which comes to their mill, and they evince a disposition to ac-

complish their ends by hook or by crook, by pandering to every prejudice, by casting forth a drag net in the hope that something may be found which will enable them to disable and disarm the Governor, whom they deliberately set out to make harmless when it was discovered that it was his purpose to be the Governor of the State, and to assert his independence in that high office.

I have now completed my analysis of each of the eight articles of impeachment. I have endeavored to deal with them, not as an advocate, but, so far as it was possible for me to do so, in the cold light of reason, in the hope that I might be able to assist this Court in arriving at a correct conclusion, both with regard to the controlling law and the evidence which bears upon the several issues which you are now called upon to determine.

I have not consciously made a statement which has not been fully borne out by the record, by public history, and by the authorities to which I have appealed for support, and now, at the completion of this discussion, I feel justified in asking for a judgment of "Not guilty" with regard to each of the eight articles.

From time to time during the progress of this trial we have heard expressions that this Court is not bound by any rule of pleading or allegation; that it can act irrespective of statute; that it is a law unto itself; that it is not bound by the articles of impeachment; that even if the respondent has not been guilty of misconduct in office, or of any crime, he may, nevertheless, be impeached on the ground of moral turpitude, or on general principles.

These expressions are the counsels of desperation, and would not be deserving of comment but for the fact that they may be symptoms of a state of mind which, if it ever enters the portals of the Temple of Justice, will portend unspeakable and immeasurable evils to the State.

Our civilization is one which is the outgrowth of law and orderly procedure. The law represents the crystalized experience of mankind. It proceeds from precedent to precedent. It is what the late James C. Carter called "embodiment of custom;" or, as Lord Chancellor Haldane recently expressed it in

more philosophic phrase, it is the "expression of sittlickkeit." To disregard these legal principles, judicial precedents, and the results of established custom would mean the reversal of the hands of Time and the eventual loss of all the blessings which civilization has secured to mankind.

It is for this reason that personally I feel the weight of the responsibility that now rests upon me. As I have already said, we are not so much concerned in this case with William Sulzer, the man, or the Governor, as we are with the supremacy of the law, with the perpetuity of its principles, with the preservation of orderly government. Our individual predilections, our partisan feelings, the satisfaction of our momentary desires, are of little moment. They are but baubles, the toys of children of larger growth. But what is of the utmost concern to every patriotic citizen, to every lover of justice and righteousness, to every man who has aspirations for a higher life and for the elimination from the world of tyranny and despotism, is that the law shall not be weakened or undermined, whatever the immediate consequence of its strict application may be.

Let there not be substituted for the rule of conduct described by the supreme power of the State, the rule of judgment which may seem best suited to the accomplishment of what for the moment we believe to be the thing we desire. The result so attained will crumble into ashes in our hands, and the day of reckoning will be bitter as the waters of Marah.

There is no rule of measurement more perilous than that of the Chancellor's Court. He who is the incumbent of that office to-day may not be there to-morrow, and the reaper who follows him, who sows the noxious seeds, will be apt to sow another crop which will carry death and extermination to the harmonious system of laws under which we have hitherto prospered and advanced.

There is no middle course; we must either steer our bark according to the accepted rules of navigation, or permit it to drift whither the wind listeth. Unless there be a pilot to guide the vessel, unless it proceeds according to the chart of experience, anarchy will be inevitable. It is for this reason that I conjure you not to be swerved from the path which the law has marked out for the guidance of your footsteps; that you do not lend

ear to those who prate in glittering generalities; and that you do not follow the will-o-the-wisps which lure into noisome bogs of anarchy.

Let the law be the Polar Star which now, as in the past, points out the path of safety. Upon your decision rests not the future of William Sulzer, but the happiness of future generations. Shall ours be a government of laws, or one of passion and caprice? It is my fervent hope that the decision which is to be rendered here will not leave the outcome in doubt. Though life is sweet, may I not live to see the day when the law shall cease to be paramount in our daily lives and in our system of government.

Mr. Kresel.— May it please the Court, before Judge Parker follows with his argument, may I, at this time, introduce the letter written to Mr. Lehman, which your Honor will recall Mr. Lehman was to produce here?

Mr. Marshall.— Let us look at it, please.

Mr. Kresel.— Pardon me.

Mr. Marshall.— Let us look at it.

Mr. Kresel.— He sent it by mail.

(Mr. Kresel passes letter to Mr. Marshall.)

Mr. Kresel.— Just mark that.

(The letter offered in evidence was received and marked Exhibit M-133.)

Mr. Kresel.— May I read it, sir?

The President.— Yes.

Mr. Kresel.— Counsel for the respondent make no question that the signature is the Governor's signature. The letter reads as follows (reading):

"*July* 4, 1912.

HERBERT H. LEHMAN, Esq., 16 *William Street, New York:*

My dear Mr. Lehman.—Your very kind letter just received on my return to Washington from the Baltimore convention. I certainly appreciate all you say, and thank you.

I am receiving many letters similar to yours from all over the State, urging me to be a candidate for Governor, and of course, I am gratified to know my work is appreciated.

You can help me very materially, and you know exactly what to do and how to do it, what to say and how to say it, and a word to the wise is sufficient. Of course, this is confidential.

With best wishes, believe me, very sincerely your friend,

WILLIAM SULZER."

The President.— That was, of course, before the nomination?

Mr. Kresel.— That was before the nomination.

The President.— At the time of the Presidential nomination?

Mr. Kresel.— Yes, sir.

The President.— Now, Judge Parker, if you please.

Mr. Parker.— Presiding Judge, and associate Judges of the High Court of Impeachment:

Down to this moment, in no public print, or in the presence of your Honors, have I offered any criticism of the respondent. I held myself in reserve, as I deemed it my duty to do, until the story should all be told, until the circumstances which had been marshaled by the Managers, the facts and circumstances had been marshaled by the Managers, should be met, if they could be met, as I hoped they might be met. But the evidence is all in, the case closed, and there is no answer to any of the material facts which have been presented on the part of the Managers. Not a word. If there is any question whatever that can be made as to any fact, none has appeared to present it. And we come now to a consideration almost entirely of the evidence offered by the Managers.

If it please your Honors, let me take you back just a little ways in the history of this State, back of the year 1892. There had been growing in this State, by the representatives of both of the great parties, an inclination to place in nomination for important office men with a large bank account, to the end that they might contribute towards defraying the expenses of the organizations and carrying through the weaker — financially speaking — can-

didates. As a result there grew up in this State, wisely, as we now know, a public sentiment which demanded that no longer should the check book measure the availability of a candidate.

And in the year 1892 there was placed upon the statute books of this State a statute which commanded all candidates for the greater public offices to make statements, showing the amount of money which they contributed and expended in the course of the campaign, and to whom they gave it, every item; and it is required that that candidate should make affidavit that the statement so prepared by him is true.

Now, what was the purpose? It was not merely for the purpose of checking the nomination of men whose principal measure of ability was his pocketbook; but it was to the end that there should be checked in this State the growth of vote buying.

After a little there came another discovery to the people of this State, and to the people of the nation. That was that organized capital in certain great centers of this country was exercising an undue influence in the selection of public officials, especially members of Congress and legislative officers and others.

And then there came an investigation in this State, an investigation by the Committee of the Senate of the State of New York; I think it was a joint investigation, with now Mr. Justice Hughes as the counsel. And as a result of that investigation it was disclosed that there were corporate contributions being made for the purpose of aiding organizations in the conduct of political affairs. And then the people of this State awoke, and in that very year, in the spring of the year in which this investigation took place, the Senate and Assembly of the State of New York placed upon the statute book what is known as the Corrupt Practices Act. That subject, the investigation of that subject, and legislation upon it has spread, until, as your Honors know, there was a National investigation, nation wide, and the example which the great State of New York set her sister States and the nation, for this was the first corrupt practices act spreading all over.

Now, the importance of this State was that it undertook to provide a scheme of publicity to the end that there should be no contributions whatever for political purposes unless it should

be made known to the public. There was an appreciation then, due to the investigations which had been made, that those who contributed, while they may not always have influence, are likely to have influence in proportion to their investments; and so the great scheme of this Corrupt Practices Act which was drafted by Mr. Justice Hughes was to make it impossible, so far as it was possible to make it impossible by law, that there should be a contribution or expenditure for political purposes in this State save when it should become known to the people, to the end that they might discover whether or not undue and improper influence was being exercised.

In that year, 1906, this act was passed. It, as you remember, provides first, that the candidate shall make a statement. First, that the treasurer of a committee and every three persons co-operating or working together constitute a committee. Whether that is their purpose or not, if three men co-operate and work together for a party or for a candidate and employ money in the doing of it, they constitute a committee under the statute, and the treasurer of it is bound to make a report and file a statement— in case of State officers file a statement in the Secretary of State's office; and the candidate is also obliged to make a statement.

In that very section it provides that he too shall make a statement "like that as hereinbefore," that is, like that which the treasurer of the political committee is obliged to make, and then every person who contributes money to the campaign, to any campaign or for the benefit of candidates in a campaign, he must make a report unless his contribution is made to a political committee or is made to the candidate himself. So that in this way it was believed by the Legislature of this State and by him who was afterwards Governor Hughes, the draughtsman, that so long as men were honest and truthful it would be impossible that contributions should be made for use in political campaigns without that publicity which it was the object of the statute to secure; and so far as I know, it has been observed by those who have come to the Governorship — the proud position of the Governorship of this entire State — down until last year.

On the 13th day of November of last year William Sulzer who has then received, as his counsel have said, the greatest plurality

ever given to a candidate for Governor in this State, in obedience, as undoubtedly the Secretary of State supposed, when he filed it, in obedience to the statute filed a statement and this statement acknowledges giving the items of the persons from whom he said he received it, acknowledges the receipt of $5,460 and says that he has expended, and gives the item, $7,724.29, so that apparently he had paid out of his own pocket something over $2,000 in the course of the campaign.

Now, the charge of the Managers is that that statement is untrue. The charge is that it deliberately suppresses a great amount of items something like — that it suppresses for instance, the item which has been frequently discussed in your hearing, the Jacob H. Schiff item of $2,500. Do you recall that testimony of Mr. Schiff? May I repeat it to you?

Mr. William Sulzer, of whom Mr. Schiff was a friend, shortly after his return from Syracuse entered the banking office of Mr. Schiff and expressed his appreciation for a note of congratulations which he had received from Mr. Schiff, and Mr. Schiff is a man of affairs and of discernment. He appreciated it was an unusual thing for a candidate for a Governor to start to personally call upon a banker for congratulations, to take his congratulations, and he promptly said:

"Is there anything in particular that I can do for you?

The answer was ready:

"Are you going to contribute toward my campaign fund?"

"Yes," says Mr. Schiff, "I shall be glad to do so."

"How much will you contribute?" Came the answer, "$2,500."

"Is that all you will contribute?" And when Mr. Schiff replied that it was all that he would contribute, he thanked him and requested him to make the check payable to Louis A. Sarecky.

Now, we have shown contributions from:

Mr. Morgenthau, of $1,000, then treasurer of the National Committee of the Democratic party.

From Abraham I. Elkus, with his letter, expressing its purpose to be: "I know," said Mr. Elkus, "that congratulations are

very pleasant and very nice, but that a campaign, to be successfully conducted, requires something more than words, and so I take pleasure in enclosing my check for $500, to aid in the expenses of your campaign."

When we had presented to this Court this statement of expenditures, showing that checks had been received amounting to over $10,000, that cash had been paid in amounting to 26,000 and odd dollars, that altogether $37,400 had been paid into the hands of the candidate, $37,400 more than appeared in his statement, which was $5,460, there was an attempt to meet that statement made. And how? Did the defense attempt to show that he had not received every one of those dollars which our proof tended to show? No attempt of that kind was made. What did they attempt to do? They put on the stand Sarecky. For what? For what purpose? First, to challenge the making of the affidavit.

This affidavit, as you will recall, the taking of it, had been proven by Mr. Wolff, whose testimony was clear, and strong, and vigorous and honest, as everyone of your Honors must believe, but our friends, not having been able, apparently, because they produced no such witnesses, not having been able to meet in any wise the allegations in the articles and the proofs which have been presented by the Managers, undertook to attack the affidavit, just as, earlier in the procedure, when a demand was made necessarily from all over the State, that the candidate present to this Court his answer to the charges that were made, the objection was that the Assembly had not the power of impeachment at the extraordinary session.

When the proof was made of the due execution of the affidavit, then, instead of attempting to meet the proofs which the Managers had made, showing $37,400 more received that was called for here, they brought out Sarecky — Sarecky — to challenge the making of that affidavit. According to Sarecky, he took the affidavit, with the signature of William Sulzer upon it, and went into another room, occupied by some lawyers, where there was a notary public, with a view of having him take it, as you would judge, from the testimony, without seeing the candidate; but he says that Mr. Wolff was bound to see the candidate and congratulate him, and so Mr. Wolff came in and, according to Sarecky,

Mr. Wolff said, "Well, is that your affidavit?" or words to that effect.

Now, may it please this court, I take it you will not give a second's consideration to this attempt to challenge the making of this affidavit. I take it that a witness like Wolff, who stands before the court unquestioned, uncriticised, whose method of giving his testimony indicated that of a clear-headed, honest, painstaking notary public or commissioner of deeds, that his testimony will not be overthrown by Sarecky, upon whom has been placed the burden of carrying the only attempt at defense which the respondent, through his counsel, has seen fit to make.

I listened to Mr. Marshall's eulogy of Sarecky, and I was amazed at the eloquence which Marshall can display in attempting to uphold so absolutely worthless a character as Sarecky demonstrated himself to be while on the witness stand.

Why, your Honors, did he not testify before you that when asked to furnish to the Mutual Alliance Trust Company authority for him to endorse the checks of William Sulzer that he prepared the letter, that he signed the name of William Sulzer to it with the intent to deceive the Trust Company, and that he also put at the head of the letter the words "en route," because, as he said, he knew the Trust Company officials read the papers and they might discover that William Sulzer was up the State at the moment that he was supposed to be signing this letter? But that is not all. That is quite enough, it seems to me, to discredit that witness absolutely with every member of this Court. I cannot conceive how the testimony of such a witness can for a moment receive any consideration whatsoever as against any other witness who stands unchallenged before the Court. And that is not all. There are a number of things about Sarecky's testimony that I should like to present to this Court, but I shall not take time to do it, but I wonder how my friend Marshall gets over the fact that it was demonstrated here that he testified before the Frawley Committee that Mr. Marshall was his counsel and that he was acting by his advice while here, but testified that he had not seen him or consulted him, but that he had seen a copy of an opinion which he had rendered. Now, I pass that.

The other task placed upon the shoulders of Sarecky was to persuade this Court that William Sulzer honestly signed this statement; that the statement that he had nothing to do with its preparation, speaking of atmosphere — my friend Marshall loves to speak of it — there has been a great attempt, it seems to me, to create an atmosphere that William Sulzer is a man who is absolutely blank so far as dollars and cents are concerned, but as this trial drew near a close it must have been borne in on your Honors that he is very thrifty indeed and has quite a knowledge of business affairs. Now, he testifies that he came in with this statement, showed it to the Governor, and that the Governor looked it over, and then the Governor said: "Is it all right?" Well, he said, "It is just as near right as I can make it with the data I have," and then the Governor said: "All right," and signed it. Well, your Honors, when William Sulzer glanced over these figures and these contributors he must have been very proud indeed of the talent of his pupil, for he took Sarecky from the high school, and all the education that he had in practical affairs he had acquired in William Sulzer's office, and necessarily under his direction, and we can well understand that he must indeed have chuckled at the wisdom of Sarecky when he glanced over this list, for he did not find in that list the checks of bankers like Jacob H. Schiff; there were not to be found in that list the checks of his brewery friends; not a single check could he discover there of a politician, whether leader of the organization, district leader or otherwise. Even Morgenthau, with his $1,000 did not appear. Not a single dollar was there representing any of the great interests in New York. Indeed, there was no check there larger than $500, just one of $500. And as he glanced over that list I say he must have thought, inasmuch as according to Sarecky he had not been consulted before about it, what a clever boy he is to keep out all these things; how glad I am that he did not insist upon putting in Ryan's account or Schiff's or General Meany's or Morgenthau's. Well now, of what use, your Honors, is that testimony? Why was it presented to you? Suppose it was true so far as the boy was concerned that that was as good as he could do. You having heard him do not believe it was true I am sure;

but suppose it was. The man who read that list and examined it, he knew it was not true. It does not help him for the boy to say he did the best he could. His master, William Sulzer, knew it as a lie. He knew that very early he had gone to his old friend Senator Stadler and said to him, "You can help me in more ways than one," and that this old friend of his, Senator Stadler, had gone out about the State among his brewery friends to see if he could not help him in more ways than one, and Senator Stadler says he did; but one of the first practical things that he did was to go over to Mr. Sulzer's office with Dersch with two checks of his brewery friends amounting to $350 which he received, and when he received it he expressed the wish hereafter that instead of checks he should get cash; cash is what this evidence discloses it was his struggle to get.

Checks he took when he could, but when he took one, did he ever make an acknowledgment of the check in terms? No such letter will be found in this record. Cash he asked, and, so far as we know, the asking began with Senator Stadler, and in a few days Senator Stadler appeared again, with Dersch. This time three of his brewery friends had been heard from. The checks payable to Stadler, they were cashed, and this time appeared in the house of he that was soon to be the Governor of this State, these men, and they presented to him $700 in bills.

That made $1,050 he had received from that source alone. Do you suppose, for a moment, that he didn't think of it or any one of these friends, when this statement was handed to him? Do you suppose he could have forgotten the fact that he had gone to Schiff and had had the courage to ask him whether he was going to subscribe to his campaign fund, and that when he had said he was going to, that he told him to make the check payable to Louis A. Sarecky for the $2,500 which he had promised to give him?

Do you suppose that when he looked over this list he didn't have in mind that along about the middle of October he had called up Allan Ryan and had said to him over the phone, "Tell your father I am the same old Bill?" What was implied in that statement? Was it not implied that his father would understand what "the same old Bill" meant? That he had at least been

serviceable to him or friendly, on other occasions, and that he would be serviceable and friendly again, was not that the promise? Why the suggestion, "I am the same old Bill"? That suggestion, of course, was to give assurance further that, being "the same old Bill," he would continue to be friendly and serviceable and kindly.

Now, as I have said to your Honors, the amount which we have proved, without any contradiction whatever, by way of checks, contributions not included in the statement which Mr. Sulzer filed, came to $10,700. I shall refer to that again a little later.

And the cash contributions. Now, by cash contributions we mean, not merely the instances where $2,000 in bills would be handed over, but $2,000 payable to cash, as in the case of the Richard Croker check.

The total cash paid over and not reported was $26,700, making in all $37,400.

Our charge is, first, that this violated article 1. I shall not stop to read the article. You remember that article 1 charges the respondent here with having made a statement in the form required by statute, but from which he excluded items which we now show amount to $37,400, and made affidavit that the same is true, but article 1 is not the perjury article. That is article 2.

We have proved, and we need not stop to comment on it further, we have proved that that article has been violated; that he has not complied with the law; that he has wilfully and knowingly failed to comply with the law. Circumstances which have been shown in connection with it are such that we need not stop for its consideration at all. You are all men of experience and men of affairs, and you realize that it is demonstrated now by the evidence which we have presented here, without one iota of it being challenged by the defense, by witnesses produced on the part of the defense, that he violated the statutes of this State, when, under that article, he made a statement suppressing $27,400.

Now, your Honors, for that offence — I shall not stop now to speak of it, I am going to treat it a little later, on the subject generally. For that offence we say the Governor should be impeached. He violated the law of this State, wilfully and inten-

tionally violated the law, and when he did it he did it with full knowledge of the requirements of the statute; and it is an offence.

Section 560 I think it is, section 560 of the Election Law provides that in case a judgment shall be rendered against one who fails to file a certificate as required by the Election laws or files one which is erroneously made, if such person or persons, or committee or committees, have failed to file a statement, or have filed a false or incomplete statement, and such failure to file or such false or incomplete statement was due to a wilful intent to defeat the provisions of this article; or if the person or persons proceeded against shall fail to file the required statement or amendment, as directed by a judgment of the Court or justice within ten days after the entry of such judgment the person or persons, or committee or committees proceeded against, shall be liable to a fine not exceeding $1,000, or imprisonment for not more than one year, or both.

Under the argument which I shall make a little later, we say that constitutes a misdemeanor under the statute.

Now, I bring your Honors' attention to Article II, which is the perjury article. That article was discussed very fully before this court by Mr. Kresel. The argument which he made needs no repetition here. I wish to say a little something in addition to it, but his argument is before you, and we all concur in its accuracy. I make the further point, or make the point in a different way.

Under the Act of 1892, every candidate is required to file an itemized statement showing in detail all moneys contributed or expended by him, directly or indirectly by himself or any other person in aid of his election; such statement shall give the names of the various persons who received such moneys, the specific nature of each item, and the purpose for which it was expended or contributed. There shall be attached to such statement an affidavit subscribed and sworn to by such candidate, setting forth, in substance, that the statement thus made is, in all respects, true, and that it contains a full and detailed statement of all moneys so contributed or expended by him, directly or indirectly, by himself or through any other person, in aid of his election.

Now, in the year 1906 was passed the Corrupt Practices Act, and it contains this clause, requiring a statement by the treasurer of every political committee which, in connection with any elec-

tion, receives or expends any money or its equivalent, setting forth all the receipts, expenditures, disbursements and liabilities of the committee, and every officer, member and other person in its behalf, in each case it shall include the amount received, the date of its receipt, the name of the person, to whom, the date and purpose of it. And then this clause, to which I specially direct your attention:

"The statement to be filed by a candidate shall be in like form as that herein provided for." That is, shall be in like form as that provided for the treasurer of the political committee. But in statements filed by a candidate there shall also be included all contributions made by him.

That is, but one statement is required of the candidate, although the facts to be stated are prescribed by two statutes. The first of these requires the statement to show in detail all the moneys contributed or expended by him, directly or indirectly, and that it shall be verified by his affidavit.

The second, a law of 1896, having prescribed the statement of money, or its equivalent, to be made by the treasurer or political committee, shall include, among other things, the amount received, the name of the person from whom, and the date of the receipt, added that the statement to be filed by a candidate "shall be in like form as that hereinbefore provided; but in statements filed by a candidate there shall also be included all contributions made by him."

That is to say, the words "the statement to be filed by a candidate" in this law of 1896 refers to the statute prescribed by the then existing law of 1892, and requires that that statement shall, in addition to expenditures of the candidate, specify the amount received by him, from whom, and the date of the receipt. And this of course, without change as to the affidavit, no change whatever was needed. Both amounts, the money received and the money expended are to be included in one and the same statement, to be verified by one and the same affidavit.

But, your Honors, assuming that there is an opportunity for debate about it; notwithstanding the effective argument of Mr. Kresel, notwithstanding the statement which I have just made, which seems to me to be clear and to cover the ground fully, sup-

pose your Honors should still have some question in your mind as to whether that is the construction which should be adopted, then I make this point, I make the point, your Honors that, by section 209 of the same law, chapter 502 of the Laws of 1906, it is prescribed that

"The Secretary of State shall provide blank forms suitable for the statements above required."

I say, your Honors, I make the argument now that the statement which the Secretary of State is, by this provision of the statute, authorized to make, becomes a part of the law, with the same force and effect as if it were incorporated into the statute itself. It was for that reason that we offered to show that immediately after this act of 1906 was passed, the Secretary of State did prepare such a statement, and that the statement thus prepared has been in use ever since, and that it was from the Secretary of State, as Mr. Sarecky testifies, that he received this statement.

Now, as to the validity of that provision of the statute that the Secretary of State shall provide forms suitable for a statement, the Constitution provides that the duties and powers of the several officers in this article mentioned shall be such as may be prescribed by law.

Section 206 of chapter 502 of the Laws of 1906, as amended by chapter 596 of the Laws of 1907, requires certain persons, including candidates, to file statements of money received and expended in connection with any election.

Then section 209, which I have already quoted. No case or decision is found in which this section was drawn in question. "The duties and powers of the secretary of state shall be such as may be prescribed by law," says the Constitution. "The secretary of state shall provide blank forms suitable for the statement," says this statute. There is the constitutional authority, and the act of the Legislature under it. The only limitation in the statute is that the form shall be suitable, as to which it is assumed nothing need be said. The only conceivable pretense of objection to the statute itself is that it is an attempt to delegate legislative authority to the Secretary of State. The true distinction is between the delegation of power to make a law which involves a discretion as to what the law shall be, and con-

ferring authority or discretion as to its execution, to be exercised and pursuant to the law. The first cannot be done. To the latter no valid objection can be made.

Here the Legislature itself has declared what the law shall be, to wit: "that a statement shall be filed" by certain persons of certain facts, every one of which is specified by the Legislature as "the receipts, expenditures, disbursements and liabilities, the amount received, the name of the person or committee from whom received, the date of its receipt, the amount of every expenditure or disbursement exceeding $5, the name of the person or committee to whom it is made, and the date thereof, and the purpose of such expenditure or disbursement. Having done this, the Legislature, with the constitutional power to prescribe the duties of the Secretary of State, requires him to perform the mere ministerial duty of providing blank forms suitable for such statements. That is not a legislative act, no more so than is the statute requiring the Secretary of State to have the session laws bound, or any one of hundreds, if not thousands of similar ministerial or administrative acts constantly required everywhere of such and other officers, and the validity of which has never been questioned. The Secretary has no discretion to change, add, or omit a single word or fact. The Legislature prescribes the kind or nature of the facts to be stated. This is as far as it could possibly go. The fact, that is the amount of money, and the name of persons, must of necessity be furnished by the candidate or other persons required to file the statement. Suppose the Legislature had stopped with the requirement that the candidate make and file the statement; would anybody claim that that was an attempt to delegate legislative power to him? Yet that would be as reasonable as a claim that the Legislature might not authorize the Secretary to provide blank forms for the statement.

Of course the provision that he shall do this is itself a law and the doing of the act is lawful, but it has no semblance of law making by the Secretary of State. His part in the transaction is not legislative even in the remotest sense but an act in obedience to legislation. The only discretion lodged with him is as to the mere mechanical form in which the prescribed form shall be made. That such a thing should be regarded a legislative act is too absurd for discussion.

If the Legislature could not authorize such things to be done no law could be made or enforced. If such things were not permissible what would become of the innumerable laws, permissible laws, which go much further than this, such as that the Court shall provide rules of procedure, municipal corporations, ordinances and so forth.

In Polinsky against the People, 73 N. Y. 65, the validity of the following ordinance of the Board of Health of the city of New York was involved:

> "No milk which has been watered, adulterated, reduced or changed in any respect by the addition of water or other substance, or by the removal of cream shall be brought into, kept, held or offered for sale at any place in the city of New York, nor shall any one keep, have or offer for sale any such milk."

The authority to pass sanitary ordinances was conferred on the Board of Health of the City of New York by chapter 335 of the Laws of 1873, which created the present board.

Held: "That the Legislature in the exercise of its constitutional authority may lawfully confer on boards of health the power to enact sanitary ordinances having the force of law within the districts over which their jurisdiction extends, is not an open question. This power has been repeatedly recognized and affirmed."

The rule was repeated in 175 N. Y. at page 444. In People ex rel. Cox v. Special Sessions, 7 Hun, at page 214, the relator was convicted and sentenced to the penitentiary for violation of provisions of the sanitary code promulgated by the Board of Health of the City of New York. The making of the Code was authorized by section 82, article 2, chapter 336 of the Laws of 1873.

The objection to the Code and therefore to the conviction, and that the making of the Code involved such an exercise of legislative power as has been exclusively confined to the Senate and Assembly. Daniels, J., said, after citing authorities:

> "The ordinance in this case could not be held invalid without practically undermining this entire system, which has

existed for years entirely unchallenged. The power of the Legislature over this subject has not been denied by the Constitution, and the conclusion necessarily follows that it could, as it has, delegate to the Board of Health of the City of New York the power to make the ordinance in question."

It was merely the exercise of municipal authority to the intervention of this board instead of the common council, and no well founded objection could be made to that as long as the ordinances to be enacted were to be confined to the subject — to its jurisdiction and control.

An act of Congress provided that oleomargarine should be packed in wooden boxes and marked, stamped and branded as the Commissioner of Internal Revenues, with the approval of the Secretary of the Treasury, shall prescribe. Held, the discussion of the stamps, marks and brands is merely in the discharge of an administrative function, and falls within the numerous instances of regulations needful to the operation of the machinery of particular laws, authority to make which has always been recognized as within the competency of the legislative power to confer.

In re Kohlak, 166 U. S., p. 536.

So that your Honors, it seems to me, that I need not stop longer with the perjury article. It seems to me that the conclusion must be reached by this Court that the crime of perjury has been committed. The only question which has been raised, that of my distinguished friend, is that they were not required to make the statement under the statute. That is, he said, that contributions provided for by one section of the statute need not have been stated. Then, he undertook to state it, and did not state it truthfully; but his proposition is that they were not required to state contributions. The object, of course, of the arguments which I have presented to your Honors just now, as well as the argument which was made by Mr. Kresel on his opening, is that demonstrated, as we think we have, that he is required, every candidate is required under this statute, to make a statement

under oath of the amounts contributed to him as well as the sum which he has expended out of his own pocket.

And my last contention is, of course, that if there was an opportunity for the debate which Mr. Marshall has suggested, and which was more fully met in the brief which was prepared by Mr. Kresel than I have attempted to make it here for the purpose of saving time, that it is fully put at rest by the requirement of the Legislature that the Secretary of State make the statement, which, under the authorities which I have presented to your Honor, gives to that section 209, plus the statement, the force of statute.

But even if this construction of the section — I am now referring to a point in Mr. Kresel's brief, the respondent swore he said, and intended to swear a false statement of his campaign receipts. That he was required to file such a statement of receipts by the Election Law, if not by the Penal Law cannot be questioned. Because he combined the two statements in one and swore to the correctness of the whole, can we pick out one false item, and say that as to this he did not perjure himself, while as to the other false items, he might have or did perjure himself?

I come now, if the court please, to article 6. Article 6 has been termed throughout this hearing as the larceny article. And after reciting in the article the facts, very much as they are recited in article 1 and article 2, it is charged:

> "That in so converting and appropriating said money and checks to his own use, the said William Sulzer did not act as required by law, but did act wrongfully and willfully and corruptly, and was guilty of a violation of sections 1290 and 1294 of the Penal Law, and of grand larceny, and the same was done for the purpose of concealing, and said action and omission of said William Sulzer did conceal, the names of persons who had contributed funds in aid of his election and defeated the purposes of the provisions of the statute which required such publication that the people might know whether or not said Governor, after he had taken office, was attempting to reward persons who had so contributed in aid of his election, by bestowing official patronage or favors,

upon them, and thereafter, having taken the oath as Governor of the State of New York and proceeded to perform the duties thereof, the said appropriation to his own use, and his larceny of the same, caused great scandal and reproach of the Governor of the State of New York."

In the argument which was presented to you by Mr. Kresel, and which I will not repeat, although I should be very glad to do so if the time would permit, it was demonstrated, as I think, that the articles charged and the proof before your Honor now show that the crime of larceny was committed if not as to all of the items going to make up the grand total of $37,400, but as to very many of the items. There will be no question in the minds of anyone, I think, as to many of the items, and I shall refer to them briefly after a while.

But I wish to argue before your Honors that there was larceny as to all of the articles. While there can be little question but that the respondent had these campaign contributions in his possession and under his control as trustee for the contributors, even were this not so he may still be guilty of larceny within the meaning of section 1290 of the Penal Law, for this section makes the obtaining of money by false pretences larceny.

People v. Lawrence, 137 N. Y. 517, 532, wherein the corresponding section of the penal code was construed, the words of the statute expressly so provide; reduced to its most simple form the first part of the statute declares that a person is guilty of larceny if he obtains possession of the property of another "by color or aid of fraudulent or false representation or pretence," with the wrongful intent specified; that is, to deprive the owner of the property or invest himself or another with it. There can be no question but that the respondent obtained possession of these moneys with the intention of appropriating them to his own use, for he did appropriate them to his own use. Therefore, the only way in which the respondent can be acquitted of the charge of larceny is by finding that he did not obtain possession of the money contributed, to use the words of the statute, "by color or aid of fraudulent or false representation or pretence;" to establish the fact that he obtained pos-

session of the money in the manner denounced in the statute it is only necessary to show that he obtained possession of the money for a special purpose by some device or false pretence, intending to appropriate it, and appropriated it to a different purpose. This is well settled law.

In the oft cited case of People v. Lawrence, 137 N. Y., involving the construction of section 528 of the Penal Code, which was the same as section 1290 of the Penal Law, except that the last paragraph of this section 1220 was not contained in the earlier law, Earl, J., in delivering the opinion of the Court, said: "Larceny is defined in section 538 of the Penal Code so as to include not only that offence as constituted at common law and under the Revised Statutes, but also embezzlement, obtaining property by false pretences and the felonious breach of a trust. To constitute larceny it is not needful that the property stolen should have been taken from the possession of the owner by trespass, but if the person obtains possession of property from the owner for a special purpose by some device, trick, artifice, fraud or false pretence, intending at the time to appropriate it to his own use, and he subsequently does appropriate it to his own use, and not to the special purpose for which he received it, he is guilty of larceny, and so it has repeatedly been held." Then follows the citation of these cases:

Smith v. People, 53 N. Y.
Loomis v. People, 67 N. Y.
People v. Morse, 98 N. Y.

This language has frequently been referred to or quoted with approval in later cases, among which may be mentioned the following: (citing them)

Now, if your Honor please, I wish to refer briefly before proceeding with another branch of the discussion under this article, to the campaign checks which were not reported:

The Schiff check I have already spoken of. About the check of William F. McCombs, there is no testimony. About the check of Mr. Brady it appears that that contribution was to candidate Sulzer. Pinkney said that his was a campaign contribution, Steuber, there is no testimony about his. Gwathmey, the statement in the

letter was "to be handed to the people who are conducting your personal campaign." Bird S. Coler said in a letter that his was a campaign contribution. Thomas E. Rush, there is no testimony whatever about his contribution. John F. O'Brien said that his was a campaign contribution. Tekulsky: He said personally to Governor Sulzer that his "was a contribution to your campaign fund." E. C. Benedict's check: There was no testimony about the circumstances under which it was given. Peter Doelger's was for campaign purposes. Simon Uhlman's was towards his campaign fund.

In that case, you will remember that he went first to see Mr. Sulzer, told him that he wanted to contribute towards his campaign fund, and he said, "Make your check payable to Sarecky," and he sent a letter in which he enclosed the check, stating the purposes of the contribution.

William J. Elias said it was for campaign purposes.

Harvey C. Garber sent his $100 with a letter of congratulation upon the nomination.

Henry Morgenthau, the summing up of his testimony is to the effect that he did it to help him in his election; and as he was treasurer of the National Committee, it is very natural that he should have taken that position.

Abraham I. Elkus, as we have already noted, said in his letter that his was a contribution toward helping on his campaign.

Theodore Myers check of $1,000, there is not any testimony as to that except that the check was given.

About John Lynn's contribution of $500, there is no testimony excepting the giving of the check.

Spaulding, the statement was that it was given to assist in his campaign.

Edward F. O'Dwyer said that he left his check in an envelope at the Manhattan Club for candidate Sulzer.

John W. Cox said that he gave his check to help him along to become Governor, and added "and for his personal benefit."

Frank V. Straus sent a check for $1,000 to candidate Sulzer with a letter of congratulation.

John T. Dooling, check for $1,000. He stated here to this Court it was for the purpose of helping him, and did not mention campaign.

CONTRIBUTIONS OF CASH.

Mark Potters was to assist in his campaign.
William Hoffman was to assist in his campaign.
August Luchow was a contribution toward campaign.
George C. Hawley was a contribution towards campaign.
Richard Croker, Jr., said his was for his personal expenses.

I want to repeat a few sentences to you of his testimony. I read from page 804, under cross examination by Mr. Stanchfield: (Reading.)

"Q. And that expense was as a candidate for Governor, was it not? A. No.

Q. For what? A. Probably occasioned by the fact that he was a candidate for Governor.

Q. Very well, I will take it that way, occasioned by the fact that he was a candidate for Governor, and when you say occasioned by the fact that he was a candidate for Governor you had in mind, with your political ancestry behind you, that running for office is an expensive luxury, didn't you? A. Yes.

Q. You knew, Mr. Croker, as a candidate for Governor, that he would be required to make campaign speeches all over the State during the campaign? A. Yes.

Q. And that he would be compelled to carry along with him stenographers and reporters, and men for one purpose and another on those expeditions? A. I knew he would have to do that; yes, sir.

Q. Now, when you went to see him you were his friend? A. Yes, sir.

Q. You had in mind that he would have to incur all these expenses? A. Yes.

Q. And you wanted to relieve him of the burden incident to those expenses? A. Not to those particular expenses.

Q. Well, any expenses in connection with the campaign? A. Any personal expenses in connection with the campaign, or in connection with anything.

Q. Any personal expenses in connection with the campaign, or anything. What do you mean when you use the word 'anything'? A. Well, I mean anything that would occasion expense.

Q. In connection with the campaign, or outside of it? A. (No response.)

Q. What expenses did you have in mind? A. I didn't have any particular expenses in mind.

Q. None at all? A. No, sir.

Q. You did have in mind the expenses incidental to the campaign? A. I thought that might be one source of expense.

Q. One source of expense? A. Exactly.

Q. When you went with this check for $2,000, he was then, you say, running for office? A. He was.

Q. Would you have taken that check to him then if he had not been a candidate for office? A. I don't think that is a fair question.

Q. You answer" —

The witness, after a considerable colloquy, answered,

" It is impossible for me to say at this time.

Q. Why is it impossible for you to say? A. Because I cannot imagine the conditions which might exist under which I might have given him a check under other circumstances."

That closes the testimony as I read it, but it is illustrative, that you may have it in mind, and the position taken by some of the contributors in the further argument which I hope to make upon the subject.

Then came Lewis J. Conlon. He said, " to help him along in the necessary work of his campaign."

George W. Neville, a cotton broker, " campaign expenses."

Duncan W. Peck, " for his campaign."

If I may digress just for a moment, because I am not coming back to Peck, I was amazed at the argument of Mr. Marshall. I certainly hadn't any recollection of any testimony affecting Mr. Peck one way or the other in this record. Lest I might be mistaken about it, I turned to the record to see whether or not he or Mr. Hinman, who conducted that examination, had ventured to make any inquiry of him indicating that there was a suspicion even in the minds of the counsel for the respondent, that he was not a man of integrity, and you will find, if you will turn to that testimony here, that the entire cross examination, I think, covers less than a page and it is as respectful as that given to any witness. I have not the pleasure of his acquaintance. I

do not know Mr. Peck, but I do know that so far as this record is concerned, he stands as clean as anyone appearing in court.

Grossman and Seilcken, coffee importers, $2,500. No comment at all. The money was simply handed in.

Frank M. Patterson, $500, " for his expenses as a candidate," is Patterson's testimony.

Allan A. Ryan, $10,000, " for his personal campaign," but you will remember as Allan A. Ryan testified to it, that Mr. Sulzer told him he was going out in Westchester county and around, and he needed the money immediately, and he says he gave it to him for his personal campaign.

Then we come to Mr. Meany. I want just a word about Mr. Meany, before I take up this subject. Mr. Meany did testify in the hearing of your Honors, that this $10,000 was a loan. We have added it, nevertheless, to all the other items, amounting to $27,400, as a contribution of some kind. Are we justified in classifying it with the contributions? Do you believe that General Meany ever made a loan to anyone, a loan to anyone of $10,000, making no entry, making no note or memoranda, no acknowledgment, no collateral, leaving behind him nowhere any evidence that his executors and administrators who should come after him could collect it? Do you believe, in the light of the testimony which you listened to, that, no matter what the language employed, when he turned over that $10,000 in bills, he intended and expected that Sulzer should repay it?

Now, with that comment on these items, I wish to present this for your consideration. It is my view, but with that you may differ, that when, for instance, a candidate applies for campaign contributions and so calls it, he characterizes it; and that it doesn't cease to be a campaign contribution, nor that doesn't cease to be the intention of the parties, because later, someone, to save him from trouble or embarrassment, undertakes to help him by giving it some other name. It is the conversation at the time which fixes its status. The respondent, William Sulzer, falsely and fraudulently represented to the contributors of money that the money was to be expended for campaign purposes. Now, you may say, that is too broad, but that is not so. He did this, even though he didn't in a single instance say that this was the purpose for which the money was to be expended. He did this, even though

there was not the slightest indication from anything he said or any of the contributors, that the contributions would be used for this purpose.

Those who gave him or his representatives money at the time when he had been nominated for this office, and when the campaign for his election was in progress, naturally believed, and could only believe, unless they were otherwise informed, that the money was needed and would be expended to further his election. He knew this, and unless he informed the contributors that their contributions would in fact be employed to discharge his personal obligations or to help him along the road to financial independence he knew that the contributions were made with the expectation that they would be used to further his election to the office of Governor. If he did not inform the contributors of the use which he intended to make, and which he did make, of the money contributed, then he falsely and fraudulently pretended and represented to them that the funds were intended, and would be used for campaign purposes. Silence in these circumstances was a false pretence, a fraudulent representation, because that silence produced, as he could not but know it would, and as he could not but have intended it should, a false impression upon the minds of the contributors.

There are quite early and very recent expressions of judicial opinion to this effect. I shall quote only a few out of a large number that might be quoted, beginning with the early case of Lee v. Jones, wherein Compton J. said:

> " To constitute a fraudulent misrepresentation it need not be made in terms expressly stating the existence of some untrue fact; but if it be made by one party in such terms as would naturally lead the other party to suppose the existence of such state of facts, and if such statement be so made designedly and fraudulently, it is as much a fraudulent misrepresentation as if the statement of the untrue facts were made in express terms."

In Queen v. Cooper, 3 Queen's Bench Division, 510, is it not requisite that false pretense should be made in express words if the idea is conveyed.

The respondent knew that his nomination for Governor would convey the idea that money contributions to him or to his repre-

sentatives were to be for campaign purposes, and he let it convey that idea. In the late case of United States v. Sterling Salt Company, 200 Fed. Rep. it was said:

> "It is well settled law that a misrepresentation by reason of which injury results may consist of concealment of truth as well as of positive falsification."

Here we have the concealment of the truth that the money contributed would be used for the respondent's personal and private benefit, not the positive falsification that they would be used to help elect the Governor. And if you will have in mind again the instance of Mr. Schiff's, he went to Mr. Schiff himself. Mr. Schiff did not offer him a campaign contribution. Mr. Schiff said, "Is there anything in particular that I can do for you?" "Yes," says Mr. Sulzer, "Are you going to contribute to my campaign fund?" Not are you going to contribute to me; not are you going to put it in my pocket that I might invest it in Big Four stock; but are you going to contribute to my campaign fund, and then when he said, "Yes, I shall be willing to do so," the inquiry was prompt, "how much will you contribute?" And the answer was $2,500, and then he replied, "Is that all you will contribute?"

Now, there is not any opportunity for debate that so far as that case is concerned that he solicited campaign funds and his friends were soliciting campaign funds, and they were soliciting them on the ground, as the testimony here disclosed, that he would be, as a candidate, at personal expense, and that he was poor. Now, it has been shown here for instance, that Mr. Sulzer while a letter was sent him on the 15th day of July, 1912, by his brokers that he must send in a check for $8,000 in order to keep his margin good; that he paid no attention to that letter and that he paid nothing on account until November 18th, when he paid on account $10,000. So that at that particular time he does not seem to have been well informed. The evidence in this case shows that he purchased, for instance, that there were purchased on account 500 with Boyer, Griswold & Company 200 shares of Big Four stock for $12,025; that toward it there was contributed his personal check for $900; that there was contributed in its payment $7,125 in bills, and that the checks of Theodore Myers, and John Lynn, L. A. Spaulding, E. G. O'Dwyer and Dr. John W. Cox and Frank V. Straus & Company and John T. Dooling made up the balance of the purchase price of $12,025.

It appears too that there was purchased from Fuller & Gray for him 300 shares of Big Four stock, 200 between October 22d and October 1st, for which $11,825 was paid and 100 shares on November 6th for which $5,512.50 were paid, and paid in bills; each one of these items was paid in bills; so that there was paid to Fuller & Gray for these 300 shares of stock in that brief period of about two weeks $17,337.50 in bills. On the 18th day of November he paid Harris & Fuller $10,000 in bills, and on the 16th day of December he paid that same firm $6,000 in bills. And then where his own account was in the Farmers' Loan & Trust Company there was a balance to his credit in the Farmers' Loan & Trust Company on the 3d day of September of $1,112.58. He deposited $14,400 in that account in bills, and the account stood on the 1st day of November at $15,704 to his credit, and the account stood in precisely the same way on the 1st day of December, $15,704. There was paid into the Mutual Alliance Trust Company campaign checks and others, there went in and out of that account $14,066.88; so there was deposited by him during this brief period in bills — there was paid $7,125 for stock, paid for other stocks $11,825 and $5,512, and there was paid on account of his indebtedness to Harris & Fuller $16,000, and there was deposited in the Farmers' Loan & Trust Company $14,400; so that in all he deposited in bills in that period $54,862.

Now, if your Honors please, I submit that as to nearly all of the items under any construction which might be given the language employed, as to the great majority of the items it is perfectly apparent that the solicitation, however given in behalf of the Governor, was that moneys were needed to defray his campaign expenses and his personal expenses during the campaign; and that as it appears from the statement of the witnesses themselves so far as they have testified, that that was the purpose which they gave him the contributions for.

I have presented to you the argument, in which I have full faith, that it is necessarily implied even in the absence of any utterance on the subject, that when $500 or $100 is given to a candidate for office, by his friend or by a partisan or a man who is not his friend but who is a partisan who is interested in the cause, that the necessary implication is that it is for campaign purposes.

For certainly no man ever gives money to a candidate for office unless his purpose is to aid him in his campaign honestly and generously, or else because he desires to secure a lien upon him.

And, therefore, it is the duty of the court to give to those transactions, as it seems to me, that reasonable and natural construction that men who desire to have their party win, men who desire to help their friend, who have been accustomed, perhaps, to assist in the giving of money in early days, give it, not that he might put it in his pocket, not with the idea that he may buy farms for his old age, not for the purpose of laying away against that later day when he cannot earn money, but that they do it for the purpose of helping him toward meeting that burden which nearly every candidate finds quite heavy when he is a candidate for office.

Now, that brings me to this question, if your Honors please, I want again to present to you an argument that all three, notwithstanding the fact that all three of the articles that I have so far considered are for acts done prior to the taking of office of the respondent, that nevertheless it is the duty of this high Court to find a verdict of guilty as to each one of these three articles. I have listened, of course, from the beginning of this trial, as you have, most patiently and faithfully to the arguments that have been addressed to you; that no matter what a man may do, no matter what offenses he may commit against the public, no matter what crimes he may have committed is the argument, the people of this State, under their Constitution, are absolutely helpless, provided it is done the day before he takes the oath of office.

I am not here to argue, your Honors, that it is the duty of this Court to go any farther than is required in the disposition of this particular case, for that is always the method, of course, but my argument will be, your Honors, in the main that not only is precedent, my friends to the contrary notwithstanding, in favor of the Court's going back of the date when the oath of office was taken, but that, under our Constitution, it is required that, more than that, you must see that it ought to be so. It seems to me that the very reason for eliminating the mal and corrupt clause from the Constitution, and high crimes and misdemeanors, simply providing that the Legislature may impeach,

was not, as my friends would suggest, for the purpose of enabling an Assembly to impeach, and a high Court of Impeachment to oust from office one for wearing a straw hat in December. My friend's argument to you is to the point that a high Court of Impeachment cannot be trusted in this State to reach these great cases which may occur in the future, as one has occurred now. It is forty years since there has convened in this Capitol a high Court of Impeachment. We have had governors for a century and a quarter, and more; never before has there been an attempt made at impeachment, and certainly your Honors, no one of you can say that grounds have not been presented here for impeachment.

So that it is necessary, it seems to me, that the Court of Impeachment should have the power to reach those emergencies in the future, just as one has been reached now. The reason for not attempting to provide causes is to leave that subject to an Assembly, as a grand jury, and then to a High Court of Impeachment — the grandest court in the history of the State, made up of sixty members, men who are leaders in every direction of life, in judicial and legislative life, and no such tribunal as that, and you know it right well, will ever convict a man, will ever adjudge a man guilty of offenses which deserve impeachment, and oust him from office unless there be need for it. Of course, this very case, as it seems to me, presents an illustration of the importance of having omitted causes. This cause could not have been conceived of in 1877, nor '21, nor '46. No one then could have dreamed that there ever would come a time when candidates would be so hedged about by statute as that they should be required, under oath, to give statements of expenses and to make accountings. There was but slight expenditure in those days; but now, we have reached a condition where we have such a system of laws, and all of them as a step looking to the election and induction into office, among others, of the Chief Executive of the Empire State.

It is objected that the accused is not impeachable for acts committed while he was a candidate, nor even after his election, and before he took office as Governor. This objection arises, I think, from a misapprehension as to the cause for and purpose of the proceeding.

The notion or institution of impeachment of officers were inherited or transplanted in this country from England, and by England from ancient Germany. It was described by Sir Matthew Hale as a presentment by the House of Commons, the most solemn, grand inquest of the whole kingdom. To the House of Lords, the most high and supreme court of criminal jurisdiction of the kingdom. It has been said, and truly so, that the subject of impeachment, both in England and the United States, is to reach high and potent offenders, such as might be presumed to escape punishment in the ordinary tribunals, even from their extraordinary influence, or from the imperfect organization and powers of those tribunals.

Or as was said by Edmund Burke in the prosecution of Warren Hastings:

> "It is by this process that magistracy which tries and controls all things is itself tried and controlled."

Other constitutions are satisfied to make good subjects. This is a security for good Governors. In this State by this tribunal it is that the statesmen who have used their power are accused by statesmen and tried by statesmen, not upon the niceties of a narrow jurisprudence but upon the large and solid foundation of the State morality. It is here that those who by abuse of power have violated the spirit of law could never hope for protection from any of its forms. It is here that those who have refused to conduct themselves according to its provisions can never hope to escape from any of its defects. Nor has this subject, proceeding or tribunal lost any of its transcendent solemnity, dignity or power in this country nor in this State, where two of the three great co-ordinate departments the lawmaking and law-expounding branches of the State government are combined in one and the greatest tribunal of the State; the greatest not alone because of the great number and dignity of its members, nor because of the solemnity of the subject, nor the potency of the offense of which it has jurisdiction but because of the union of all these in one body clothed with the last measure of judicial power, and from whose judgment there is nor can be any appeal. That the Chief Executive of the State may be called to account at this bar there is no doubt, but objection is taken to the impeachable character of the

acts here charged, and especially to those alleged to have been committed before he took office.

After referring to charges which I will skip, whether these acts or any of them constitute a ground or cause for impeachment is to be determined by recourse to the constitutional law of the State and to parliamentary and common law as crystalized thereunder.

The first Constitution of this State, approved April 20, 1777, provided for the institution of a court for the trial of impeachments, and so far as stated here, that the power of impeaching all officers of the State for mal and corrupt conduct in their respective offices shall be vested in the representatives of the people in Assembly, and that no judgment of the court shall extend further than removal from office and disqualification to hold any place of honor, trust or profit under the State, but the party so convicted shall be nevertheless liable and subject to indictment, trial judgment and punishment according to the laws of the land.

Following the foregoing and in 1787 the Constitution of the United States was adopted with the provision that the President, Vice-President and all civil officers of the United States shall be removed from office on impeachment for and conviction of treason, bribery or other high crimes and misdemeanors, and the same provision is in the State Constitution in respect to judgment of impeachment and liability of the party to indictment.

The second State Constitution, that of 1821, broadens the grounds for impeachment, for it provided that the Assembly shall have the power of impeaching all civil officers of this State for mal and corrupt conduct in office, and for high crimes and misdemeanors, thus adding to the grounds of impeachment theretofore existing for mal and corrupt conduct in office the further power to impeach for high crimes and misdemeanors.

The third Constitution approved in November, 1846, continuing the court for the trial of impeachment, provided the Assembly shall have the power of impeachment, article VI, section 11, thus eliminating all limitations theretofore placed upon the power of impeachment by the Assembly. It omitted to specify the officers who may be impeached or any cause for impeachment or the time of the cause whether in office or otherwise. It contained the same provision as to the other Constitutions in respect to the judgment of impeachment and the liability of the person impeached to indictment.

This Constitution also provided for a concurrent remedy for the simple removal of justices of the Supreme Court and judges of the Court of Appeals. The provision authorizing the resolution by concurrent resolution of both houses of the Legislature is two-thirds of all the members elected to the Assembly and a majority of all the members elected to the Senate concurred. It also provided for the removal of inferior judicial officers by the Senate on the recommendation of the Governor, but no removal shall be made by virtue of this section unless the cause thereof be entered on the journals, nor unless the party complained of shall have been served with a copy of the complaint against him, and shall have had an opportunity to be heard in his defense.

By section 7 of article X it was prescribed that provision shall be made by law for the removal for misconduct or malfeasance in office of all officers except judicial whose powers and duties are not local or legislative, and who shall be elected at general elections, and also for supplying vacancies created by such removal. This provision as well as that relating to the removal of justices provides a concurrent remedy for the removal of officials but with no power to disqualify officials removed from holding office in the future.

Neither provision affects or was intended to affect the power of impeachment conferred by Article 6, section 11. The fourth and present Constitution approved November 6, 1894, continued in force the power of the Assembly to impeach, and provides the method for the trial of impeachments and prescribes the same judgment and liability to indictment in precisely the same language as the Constitution of 1846.

Upon these provisions of the Constitution and other rules of law cited in the course of this discussion, we submit in all candor that an officer may be impeached for acts committed prior to his term of office. What is the object of impeachment? In the first place, this proceeding is not and never was designed as a punishment for crime. It was not so in England, since a judgment of impeachment is not and never was any answer or bar to an indictment in the Kings Bench; or as the Lord High Steward said to the accused in that case, citing 7 How. St. Trials, 1297: "You are not tried upon the indictment of treason found by a Grand Jury, though that too is in the case, you are prosecuted and pur-

sued by a loud and dreadful complaint of the Commons and are to be tried on the impeachment made by the Grand Jury of the whole nation." Likewise, in this country where the person impeached is still liable by express provision of the Constitution, State and Federal, to indictment, and punishment according to law, that is, if a crime is involved in the case, this could not be so if impeachment were considered as punishment for crime, since no person shall be twice put in jeopardy for the same offence. Mr. Baird said on the trial of the impeachment of Blount of the U. S. Senate in 1799, and it has been repeated by almost every writer upon the subject since that time: "Impeachment is not so much designed to punish the offender as to secure the State; it touches neither his person nor his property, but simply divests him of his political capacity."

"The object," said the court in State v. Hill, 37 Nebr., "is to remove a corrupt and unworthy officer, which has been said in the past upon the kindred subject as to whether misconduct below the grade of an indictable offence may be the ground of impeachment, with the result that it is now almost universally settled that acts though not indictable may nevertheless be ground for impeachment. The phrase "high crimes and misdemeanors" descriptive of impeachable conduct in England and in our Federal Constitution, when the case upon its face is contrary to the foregoing rule, but that phrase was adopted in this country from English parliamentary law where it has been construed in the light of parliamentary usage and in a broader sense than at common law or the import of the words themselves — in this sense it has been held not only to include not only indictable wrongs but political offences, corruption, acts involving moral turpitude, arbitrary and oppressive conduct and even gross improprieties by judges and high officers of the state, and for which no indictment would lie either at common law or under any statute." (Citing Curtis' History of the Constitution, 260, Cooley on Constitutional Law, 159; Story on the Constitution, sec. 800; Foster on the Constitution, Vol. 1, p. 854; Opinion of the Framers of the Constitution; Judge William Lawrence, 6 American Law Register, 647; Samuel J. Tilden's Public Writings, Vol. 1, pp. 476, 478).

Many other authorities might be cited but the subject is not of any particular importance here where the acts charged constitute indictable offences, but if such were not the case the senti-

ment of the people as expressed in their several constitutions shows that they never intended to confine impeachment to indictable offences; first, because they never said so; nothing could have been more simple than a statement to the effect that a State officer might be impeached for any indictable offence, or more simple perhaps that upon indictment and conviction he should forfeit his office.

Second, instead of this, however, the cause was first "mal and corrupt conduct," then for "mal and corrupt conduct and for high crimes and misdemeanors," and finally the omission of all these for any cause whatever in that connection.

But if the omission had not been made, where is a person to be found who will say that there are not infinitely more mal, which means evil, or corrupt conduct, which means perverted or dishonest conduct, in the world, the State or neighborhood than there are indictable offences. A person cannot be indicted for drunkenness, gross immorality or indecency, insanity, or any of hundreds of other matters of incompetency, mental and physical, to perform the duties of an office. But who would say that he could not be impeached for those things? But enough of this since the subject is not directly involved in the case. The principal question now being considered is not whether the cause must be indictable, but whether impeachment will lie for acts committed by a person during his candidacy and after his election, but before his term of office began.

This question, we claim, must be answered in the affirmative both upon authority and reason; as a matter of self protection by the State as distinct and legal grounds for the removal of the Governor from office. First a word as to the constitutional provisions in relation to it.

The first Constitution provided, as we have seen, for the impeachment of all State officers for mal and corrupt conduct in their respective offices. The second for impeachment for mal and corrupt conduct in office and for high crimes and misdemeanors. The third, as well as the fourth or present Constitution declared, as in the others, that the power of impeachment shall be vested in the Assembly.

But unlike the others, no ground or cause whatever is now mentioned or has been since 1846 in this connection. It was declared, however, in a remote article of the constitution of 1846, as it is

also in the present Constitution, that provision shall be made by law for the removal for misconduct or for malfeasance in office, of any officer, except judicial, whose powers and duties are not local or legislative.

Not only so, the Constitution of 1846 introduced two new provisions providing concurrent remedies which were incorporated with slight changes into the present Constitution, and to the effect (1), the Judges of the Supreme Court and Court of Appeals may be removed by concurrent resolution of both houses of the Legislature; that other inferior and judicial officers may be removed by the Senate on recommendation of the Governor, if two-thirds of the members elected to the Senate concur, but no officer shall be removed by virtue of this section except for cause, which shall be entered on the journal, nor unless he shall have been served with a statement of the cause alleged, and shall have had an opportunity to be heard —Article VI, Sec. 11 of the present Constitution; and, (2) that provision shall be made by law for the removal for misconduct or malfeasance in office of all officers except judicial, whose powers and duties are not local or legislative, and who shall have been elected at general elections, and also for supplying vacancies created by such removal —Article X, section 7.

Second: The late Samuel J. Tilden held in a most profound and lucid discussion of the subject that an officer was impeachable under the Constitution and laws of the State of New York for acts committed before or entirely disconnected with his office.

The learned author, statesman and former Governor of this State, having referred to our adoption of impeachment from England and its modification in this country quoted the provisions of the Constitutions of 1777, 1822 and 1846, already mentioned, the latter part of which then contained section 7 of Article X as the foundation of his conclusion.

Upon this, in connection with parliamentary and common law of England it said among other things, in effect:

> "1. That an officer may be removed from his office for a cause wholly disconnected with the duties of the office, as where he had been convicted of a crime."

Continuing, he said:

> "The conviction being a public event, involving personal discredit, is deemed to produce a personal disquali-

fication of a moral failure for the discharge of high official duties. The fact of the commission of a crime is the real source of disqualification, to which fact the conviction adds certainty and notoriety. Surely, a physical disability to discharge the duties of an office is cause for removal by impeachment. The failure to resign in such a case is a moral delinquency. Naturally, insanity is a ground for removal. Can it be doubted that a moral disability is cause of removal, or that, to express it in technical language, it is an impeachable offence? But all this yields too much to the notion that a ground of removal must be an offence. Such is not, in accurate language, the case. Unfitness, inability to serve the public, creates not merely a cause but a necessity for removal."

I pause for a moment in the argument which I have written. Can it be possible, your Honors, that with the record which lies before you, any one of you could say that the Governor who has not appeared at this trial is fit longer to be the chief executive of this State. Isn't the proof which has been spread upon this record here, standing as it does wholly uncontradicted, convincing that it is absolutely impossible to conceive that the time can ever come when he can ever regain the confidence of the people of this State?

The President.— We will suspend at this point.

Mr. Stanchfield.— May we have the tabulations distributed before we adjourn?

The President.— Yes.

The Court will now adjourn.

The Crier.— Hear ye, hear ye, all persons having any further business before this Court of Impeachment, held in and for the State of New York, may depart hence and appear here to-morrow morning at 10 o'clock, to which time this Court now stands adjourned.

Whereupon, at 5:05 P. M., the Court adjourned until Friday, October 10, 1913, at 10 o'clock A. M.

SENATE CHAMBER,

ALBANY, N. Y., *October* 10, 1913.

Pursuant to adjournment the Court convened at 10 o'clock A. M.

PRESENT:

Hon. EDGAR M. CULLEN, Presiding Judge,
and
THE JUDGES OF THE COURT OF APPEALS,
and
THE SENATORS OF THE STATE OF NEW YORK.

APPEARANCES:

THE MANAGERS:
Same as heretofore.

Counsel for the Managers:
Same as heretofore.

Counsel for the Respondent:
Same as heretofore.

The President.— Call the roll, Clerk.

The Clerk thereupon called the roll and found that there was a quorum present with the following absentees:

Judge Gray.

Senator Fitzgerald.

The President.— Open Court, Crier.

The Crier.— Hear ye, hear ye, hear ye, all persons having business before this Court of Impeachment held in and for the State of New York, give their attendance and they will be heard.

The President.— Now, Mr. Parker, if you please.

Mr. Parker.— Presiding Judge, Members of the High Court of Impeachment: Mr. Tilden, speaking upon the remarks of Chief Justice Shaw which were quoted by Senator Brackett in his discussion of impeachable offences, said:

> "The doubt which seemed to exist in the mind of that great jurist arose from the words of description of impeachable offences in the Constitution of the State of Massachusetts, which literally related only to acts done or omitted in office."

And then Mr. Tilden continued:

> "The Constitution and laws of the State of New York have left us free from any possibility of so narrow a construction as that which Chief Justice Shaw disputed in its application to the Constitution of Massachusetts. They recognize the principle that a personal crime may create a personal disqualification to exercise the functions of a public office, although the particular offence may be totally disconnected with that office. They do not limit the range of impeachable acts, omissions and faults which work such disqualification to any term of office, or to any time or place, but leave the whole judgment as to whether or not the disqualification is produced to the supreme and exclusive jurisdiction of the High Court of Impeachment, which is the ultimate agent of the sovereign people in their supervisory power over public office.

I want to read that again, but first let me call your attention to the fact that it states what an examination of impeachment cases shows to be the truth, that the causes of impeachment have been developed by the High Court of Impeachment in England and in this country, just precisely as the common law has been developed by the Court of England and this country. Just as the courts of this State apply the principles of the common law to new situations, so has the High Court of Impeachment, without let or hindrance on the part of the legislative branch of the Government, developed the law of impeachment, and so it will continue to be developed for all time to come, just precisely as

the common law will be applied and developed for all time to come.

Now, with that statement, I beg your permission to read again this statement by Mr. Tilden:

> " 'They do not limit,' — that is the Constitution, our Constitution — 'does not limit the range of impeachable acts, omissions and faults which work such disqualification to any term of office, or to any time or place, but leave the whole judgment as to whether or not the disqualification is produced to the supreme and exclusive jurisdiction of the High Court of Impeachment, which is the ultimate agent of the sovereign people in their supervisory power over public officials."

And in this connection I desire to call your attention to a proposition which I believe to be absolutely sound, viz.: that the Legislature has never had anything to do either in England or this country with the determination of what constitute causes of impeachment.

The causes of impeachment have been settled by the High Court of Impeachment, beginning in England and here in this country. The causes, unless specified in the Constitution, have been determined by the High Court of Impeachment.

In Massachusetts, for instance, there is a limitation as to cause. The Constitution there requires that the impeachment shall be had only for offenses committed during the term of office; but there is no power conferred upon the Legislature to do anything with it.

In this State, the situation is different. Here it once was provided that there should be impeachment only for causes committed while in office, for "malconduct in office." And when, after a time, that provision was taken away and all limitation was taken away, there was then left to what body to determine what should constitute impeachment offenses? The High Court of Impeachment.

You may search in vain through our Constitution and you will find nowhere any expression whatever that confers upon the Legislature the power to name causes, to specify causes, or to place any limitation whatever upon the Court of Impeachment. I am not overlooking for a moment section 7 of article X of the Constitu-

tion. That has nothing whatever to do with impeachable offenses. It provides a concurrent remedy for removal, but not for disqualification. It was not expected likely that it would ever be used as against a chief executive. But be that as it may, it is a concurrent remedy, the judgment limited to removal has no power whatever to disqualify, and it has no relation to impeachment. And I also say that there cannot be found in this Constitution any limitation upon the power of the High Court of Impeachment to determine for what offenses a person may be removed from office and disqualified.

Now, there was, of course, a reason for this action on the part of the framers of the Constitution in the taking out of the provisions which were once in the Constitution, namely, that one should be removed, might be impeached and removed from office and disqualified, might be for malconduct in office and for high crimes and misdemeanors. When that was taken away, stricken out, it was stricken out for a purpose. It was stricken out in my judgment because it was realized that it is not possible for a Constitution to provide a rigid rule by which the right of people to get rid of an unfit officer may be interfered with, and so it was left, logically, rightly, to the greatest court in the history of the State, the High Court of Impeachment, to be made up of the representatives of the highest court in the State, and on the other hand to be made up of the representatives, fifty in number, of the highest legislative branch in the State. And here, to this Court, to this great tribunal, composed of sixty men, the framers of the Constitution necessarily believed that they had committed the protection of the people to the strongest and wisest and best balanced tribunal that it would be possible to create.

Nor is this question without authority by this High Court of Impeachment. The article of Mr. Tilden to which I called your attention was written just preceding the Barnard impeachment, and I wish to call your attention to that case because in my judgment it is a decision by a high court of impeachment which this tribunal should recognize; unless it is clearly of the opinion that it is unworthy of recognition and should be overthrown. It is a precedent which should have as much force and effect with this great Court as any other precedent of any other Court should have with Court of like jurisdiction and power.

In the impeachment of George D. Barnard, a justice of the Supreme Court of this State, he was charged in eleven of the 38 articles with misconduct and acts committed during a previous term of the same office, in 1868. The accused interposed a special plea that the Court ought not to have or take cognizance of these articles, because, as he said, his then "present term of office as a justice of the Supreme Court of the State of New York commenced on the first day of January, 1869, and the matters set forth in said articles and every one of them and every part of such matters occurred prior to such last mentioned date." Trial of Barnard, 147.

The late William A. Beach, of counsel for respondent, having said that respondent's plea raised the question whether he was liable to impeachment for acts which were committed prior to his then present tenure of office, argued at length the sufficiency of the plea. The substance of his contention was that respondent having been re-elected came into possession of his new office, approved and certified by the people as capable and worthy to occupy that position, and that the Assembly therefore had no power to impeach him for these previous acts, nor the Senate to try the impeachment. The Court, including Chief Justice Church and Associate Justices Allen, Grover, Peckham, Folger, Rapallo and Andrews of the Court of Appeals, besides some 28 Senators, overruled the plea by a majority of 23 to 9 at the end of a long trial and unanimously convicted the respondent on 9 of these 11 charges, the other two not having been proved.

In the Butler case, which is a Nebraska case, in which the Governor was impeached in '71, the respondent raised the question by exception, as to whether he could be tried for offenses committed during his previous term as Governor, or for offenses committed by him as Land Commissioner, respondent having been ex-officio a member of a board composed of three commissioners. The Court unanimously overruled the exceptions, holding that respondent should be held to answer for acts alleged to have been committed, or omitted, prior to the commencement of his then present term of office.

And in the Hubble case, on the impeachment of Levi Hubble, Judge of the Second Judicial Circuit of the State of Wisconsin,

in 1852, the question arose whether the court could consider offences charged to have been committed by the respondent during his previous term of office, either as a Judge of the Circuit Court or the Supreme Court. After argument, this resolution was offered:

> "Resolved, that this court, on the trial of the impeachment now pending, have jurisdiction to inquire into offences charged to have been committed as well during a former term of office of Levi Hubble, Judge of the Second Judicial Circuit of this State, as in the offences charged to have been committed during the present term of his said office."

The resolution was adopted by a vote of 19 to 5, but the respondent was later acquitted on the evidence.

The cause for impeachment may be condensed from the Constitution and foregoing authorities into three words: Unfitness for office. And the object of impeachment into four: Security for the State. Let us again summarize the provisions of the Constitution upon the cause, first all State officers are impeachable for mal and misconduct in their respective offices; and, second, for mal and corrupt conduct in office, and for high crimes and misdemeanors.

Then came the third Constitution, of '46, with the provision that the Assembly shall have the power of impeachment absolutely and unlimited, without specification as to the officers, the cause, or time of the cause of impeachment in that connection, and with the two new provisions to which I have already referred for the removal of judicial officers and also the provision of section 7 of Article 10.

Now, in the first place, it is to be remembered that the Constitution of 1846 was in force and before Mr. Tilden when he declared: "That an officer can be impeached for misconduct wholly disconnected with the duties of his office; that unfitness, inability to serve the public, creates not merely a cause, but a necessity for removal."

Further, it is also to be remembered that Judge Barnard was impeached under the Constitution of 1846 for misconduct before the term of office of which he was impeached; and so with Butler, Governor of Nebraska, and Judge Hubbell, of Wisconsin; that

Mr. Baird said, and truly so, "That the object of impeachment is to secure the state and work that it is by this process of magistracy which tries and controls all things, is itself tried and controlled. Other constitutions may be satisfied to make good subjects, but it is his security for good governors."

Aside from or in line with all this, it is perfectly apparent that public sentiment as reflected by these constant changes in the Constitution was never satisfied and still is not; that the cause for impeachment should be limited or confined to any previously defined misconduct; that it was considered dangerous, if not impossible, to define the cause beforehand; that the cause by whatever name it might be called, should be unfitness in a person to hold office and this, too, regardless of the origin of unfitness, whether before or during his incumbency, or rather that the nature and the degree of sufficiency of the cause as well as the time of its occurrence should be left to the tribunals vested with the constitutional power to determine it; and the tribunal vested with the constitutional power to determine it is the High Court of Impeachment of the State of New York.

Abandonment of the words "in office" began with the provision for the impeachment of all state officers for mal and misconduct in office, and for high crimes and misdemeanors, without limitation. And the members of the great judicial branch of the State from top to bottom became liable to removal merely for cause, with no limitation whatever, either as to the nature or time of the cause. It does not seem possible to assign any reason for the removal of a Judge of the Court of Appeals or a Justice of the Supreme Court which would not apply with equal force to the impeachment of the Governor or Lieutenant-Governor.

The Constitution states, it is true, that provision shall be made by law for the removal for misconduct or malfeasance in office of all officers except judicial, but the primary object of the provision was not to specify a cause, but to authorize a concurrent procedure for removal, and without power to disqualify the persons removed from holding office in the future, and probably was not intended to reach the Chief Executive Officer of this State; and I would like to ask your Honors, each and any one of you, to answer for yourselves, is there any doubt in the minds of any

one of you, that if any member of the Supreme Court of the State of New York, if against any member of the Supreme Court of the State of New York, under impeachment charges, such as these, and with proof such as is before you, would there be a single vote in this Chamber against his removal and his disqualification? I say, upon your consciences, that there can be, as it seems to me, made by any one of you, but one answer to that question; you would vote to remove him, and to disqualify him.

Besides who would be so shameless as to say that if the Governor or the Lieutenant-Governor should secure his election to office by fraud or bribery, that he should be permitted to hold it for the reason that he committed the crime or wrong before his term of office began? But as a step, and from his standpoint, a necessary step in the acquisition of that office. If such were the case then the paper and words which we call the Constitution, the foundation and palladium of State government, would be nothing but a pitfall and a snare in the toils of which the people might at any time be caught and bound hand and foot with no means of relief or escape, none whatever. For your honors well know, and all of you, for it has been referred to before in this trial, that when the subject was up for discussion before the Court of Appeals in 156 New York, that Court said, and as a part of its argument in reaching the conclusion that the Court would not grant a mandamus against the Governor because it was without power to enforce it, that it had not the power to take the Governor and put him in jail for contempt, he being the chief executive officer of the Nation.

In reaching that conclusion, the Court said, in the opinion written by Judge Haight:

> "There is no power of removal of a Governor except by impeachment. Nor is election to an office a certificate or any guarantee of fitness to hold that office. Such is not the nature of the transaction between the candidate or the voter."

There is always a tacit, if not an express understanding — more often the latter — between them, that the candidate is honest, capable and fit to discharge the duties of the office. If he is not so, and is elected, then he has obtained the office by false pre-

tences, fraud and deceit, and nobody should be bound by his election.

Of course, an election is no answer to charges of misconduct committed thereafter. It has been sometimes urged by writers that it was for misconduct which happened before. It has been common reading that where offenses were known and the subject of discussion and were passed upon by the people at the polls, that they had the right to condone the offenses; but it never has been suggested before this trial, so far as my reading goes and I have devoted considerable time to the subject, that the offenses which were committed afterward, after the people had passed upon it, were within at all the rule which led to the suggestion that an offense which the people have condoned ought not to be passed upon by a Court of Impeachment, but the people have never condoned these offenses. They were not known to the people. They were committed in the dark, during the campaign for the office, and some of the offenses, the filing of the statement and the taking of the oath, those two offenses covered by articles 1 and 2, were committed after the election had taken place.

There are other matters in that connection that I would like to discuss, but my time is flying, indeed has already passed, and I cannot encroach further upon those who are to come after me.

The purpose of the trial upon impeachment is to protect the honor of the commonwealth, the liberties of the people and the coffers of the State from the dangers of usurpation, stains and depredation of public officials found to be so unworthy of the people's trust and so unfit to hold the high office with which they have been honored and whose official tenure is a public menace.

The purpose of the Constitution in its provisions for impeachment is not to castigate the wrongdoer but to insure to the people just and honest administration by furnishing a method for the removal of all officials found by its tribunal to be guilty of such offenses as make them plainly the wrong instrument for the administration of good government. It is the people of a sovereign State, whose liberties, lives and happiness are in the hands of its public officials, who are entitled to the first consideration and the prime protection of this Court.

Therefore, the question to be considered is not, is this defendant guilty and to be punished by deprivation of office, but, rather, is he guilty and therefore a menace to the State while he holds in his contaminated hand the power conferred upon him by our Constitution and laws.

Whether there was ever a day when William Sulzer was fit for great public office we need not inquire. We may shut out his past with a shuddering hope that he may have been, and inquire whether the consideration of his conduct is so closely connected with, so immediately prior and so necessary a condition precedent to his induction into office that it constitutes a part of his gubernatorial career.

With all defenses in, and swallowed whole, and with all the scapegoats cruelly overburdened with his responsibilities and the misdeeds from which he alone benefitted, these facts yet stare William Sulzer in the face and defy refutation:

1. That the defendant collected personally many thousands of dollars for campaign purposes, and appropriated most of the total to his personal use.

2. That he committed perjury, in swearing to a false report of his collections and expenditures; the former being many times the amount acknowledged; that he swore to a sum as his total collection which was less than the amount of a single contribution paid to him personally in cash, in the same office in which he committed his perjury.

That he deliberately, with an intent which could by no possibility have been honest, sought to procure the contributions in such form, and to make acknowledgment thereof in such form, as should best elude detection. That even as he took pains to conceal the receipt of campaign contributions, so did he strive, by trick and device, to conceal his dishonest conversion of sums so collected.

That he sought, by the exercise of the power and prestige of his high office, to prevent the truth, and the full truth being told by witnesses called to testify before the Committee and this Court of Impeachment.

That he in effect suggested a barter of appropriations for legislative votes for a bill he sought to pass.

That he sought to coerce the action of members of this court on this trial, through influence brought to bear on those he, in his narrow and mistaken view, deemed powerful to accomplish that coercion.

That he has been guilty of contempt of this high court, of gross misconduct in office, of high crimes and misdemeanors, and of such unlawful, dishonest and dishonorable conduct just prior to his induction into office, and during the term of his office, as utterly unfits him to be a servant of this sovereign people, in this high office or in any other office or post whatever.

These acts constitute willful and criminal violations of public duty and personal dishonor; they defy the majesty of a sovereign State, insult the intelligence of a free people, and outrage every sense of honor.

Before this bar, this defendant stands guilty of these offenses charged by the impeachment and proven by uncontrovertible evidence. Before the bar of the court of public opinion, this defendant stands condemned on the evidence here presented, and on the further damning testimony of his shifty defenses and of his futile efforts to dodge, by technicalities, the trial of the issues before this high court, in which evasion public opinion, with a freedom not permitted to judicial opinion, finds direct evidence of guilt. That same public opinion takes cognizance of the fact that the defendant here is suffering from such a severe attack of moral nearsightedness that even when directed by a myriad scornful fingers, he cannot discern the dishonest, criminal, and dishonored nature of the acts proven.

Even justice must see through its severe eye something of the pathetic in this defendant's frantic efforts to cover the nakedness of his wrongdoing. Defiance, defense, justification, prevarication, denunciation of his accusers, attempts to suppress and falsify testimony and efforts to cast the blame elsewhere — each in turn has been stripped from his quaking flesh until he stands now naked before this Court, without a rag of his attempted vindication clinging to his deformed and mutilated manhood.

Every disguise has been torn from his back, from the petticoat in which he trusted for safety to the armor of defiance in which he threatened to attack and expose a political leadership to which

we have found him suing for a merciful obliteration of his misdeeds and offering the bribe of submission.

No act of his shows more perfectly the complete baseness of his character, unfitting him utterly for any public or private trust, than does his effort to coerce the members of this Court through channels his warped intellect mistakenly instructed him held the power of coercion.

Regardless of the origin of these charges, regardless of who may be the friends of this man, or who his enemies, regardless of any personal infliction of discomfort, this Court must, we feel certain, find on all the evidence that this defendant has been guilty of misconduct so gross as to necessitate his removal for the honor, peace, prosperity and good government of this community.

With this Court, alone, rests the duty of delivering this State from the menace that like the sword of Damocles hangs above it so long as this man so conclusively demonstrated to be guilty of deliberate and heinous wrongdoing remains in the Executive Chair.

And to this Court we shall commit the decision of the case against William Sulzer, securely confident that the honor, safety and welfare of this, the Empire State, are assured of the protection contemplated by the Constitution in its creation of this High Court.

Thank you for your patience.

Mr. Herrick.— Mr. President and Gentlemen of the Court: With your permission, Mr. President, I will speak from this place, as it is more convenient for me physically unless I am unable to make you and the other members of the Court hear, when I will take a different position.

The President.— I can hear you perfectly, and you can speak from there unless some of the gentlemen in the rear of the room complain that they are unable to hear you.

Senator McClelland: I might suggest, in speaking, that you turn a little bit this way once in a while.

Mr. Herrick.— As we had anticipated, the prosecution have

been driven in this case, as you have seen from the address of the late Chief Judge of the Court of Appeals, to this position:

That this Court is bound by no law excepting its own feelings, excepting its own determination, that it is not to determine but to make the law, that it is to usurp legislative functions. And you are to set that precedent for all time to come unless there is a radical change in our Constitution. Because it necessarily flows from his argument that a man can be impeached for not only any offence but for no offence. That if for any reason, political or otherwise, it is determined that a public official is no longer fit for office because he believes or does not believe in the direct primaries, because he is a low tariff or a high protection man — nay, more — if there is no limit, then the private citizens may be impeached, great political leaders, against whom charges are continually made, as they are to-day in the public prints, may be impeached by the Assembly and brought before a court composed as this is, and forever disqualified as a citizen and ruined in his political leadership and power.

That is a boundless sea upon which he asks you to venture; no rudder, no compass to steer and guide you.

In the learned brief prepared by the Managers, and I suspect by the counsel for the Managers and I suspect almost entirely by the learned gentleman who is to follow me, it was practically conceded that there was no power of impeachment for offences committed before entering upon office, because you will recall the very able effort that was made to demonstrate that the making of this statement of election expenses was official misconduct, that it was so intimately connected with a man's entering upon the discharge of his official duties that it could properly be regarded as being made — I think the word was used — in the "vestibule" to office.

I am amazed, astounded, at an argument coming from a man who so recently occupied the highest judicial position in this State, and who controverts every writer, every public writer, upon the question of impeachment that has ever written, and not a case that he cited sustaining his position was one excepting for official misconduct in office. True, in a prior position, but still official misconduct in public office, not committed as a private citizen.

The Barnard case, the Butler case, were both cases of official misconduct, not misconduct as a private citizen, but there has been something said about it, and I might just as well say it in that connection, by a gentleman who was not acting as an advocate, but who was in the discharge of a judicial duty, just as you are, upon the impeachment of Andrew Johnson, as to whether you can remove a man for unfitness for office.

Lyman J. Trumbull, one of the greatest jurists of his day, speaking on the same question of the power of removal because of unfitness for office, said:

> "The question to be decided is not whether Andrew Johnson is a proper person to fill the presidential office, nor whether it is fit that he should remain in it, nor indeed whether he has violated the constitution and laws in other respects than those alleged against him. As well might any other fifty-four persons take upon themselves by violence to rid the country of Andrew Johnson because they believe him a bad man, as to call upon fifty-four senators, in violation of their sworn duty, to convict and depose him for any other causes than those alleged in the articles of impeachment. As well might any citizen take the law into his own hands, and become its executioner, as to ask the senators to convict outside of the case made. To sanction such a principle would be destructive of all law and all liberty worth the name, since liberty, unregulated by law, is but another name for anarchy.
>
> "Unfit for president as the people may regard Andrew Johnson, and much as they might desire his removal, in a legal and constitutional way, all save the unprincipled and depraved would brand with infamy and contempt the name of any senator who should violate his sworn convictions of duty to accomplish such a result."

He considers because a man is shown to be unfit in some respects as a private citizen, his reason for his removal, irrespective of what his conduct has been in public office. Let me read you again what Lord McCaulay says in his essay on Lord Clive, in his trial:

> "Ordinary criminal justice knows nothing of setoff. The greatest desert cannot be pleaded in answer to a charge

of the slightest transgression. If a man has sold beer on a Sunday morning, it is no defense that he saves the life of a fellow creature at the risk of his own. If he has harnessed a Newfoundland dog to his little child's carriage, it is no defense that he was wounded at Waterloo. But it is not in this way that we ought to deal with men who, raised far above ordinary restraints and tried by far more than ordinary temptation, are entitled to a more than ordinary measure of indulgence. Such men should be judged by their contemporaries as they will be judged by posterity. Their bad actions ought not, indeed, to be called good, but their good and bad actions ought to be fairly weighed; and if, on the whole, the good preponderate, the sentence ought to be one not merely of acquittal, but of approbation. Not a single great ruler in history can be absolved by a judge who fixes his eye inexorably upon one or two unjustifiable acts. Bruce, the deliverer of Scotland, Maurice, the deliverer of Germany, William, the deliverer of Holland, his great descendant, the deliverer of England, Murray, the good regent, Cosmo, the father of his country, Henry IV of France, Peter the Great of Russia, how would the best of them pass such a scrutiny? History takes wider views, and the best tribunal for great political cases is the tribunal which anticipates the verdict of history.

"Reasonable and moderate men of all parties felt this in Clive's case. They could not pronounce him blameless; but they were not disposed to abandon him to that low-minded and rancorous pack who had run him down and were eager to worry him to death."

A man may be unfit in some respects. He may have committed indiscretions or worse in his private life, and yet we are to judge of him, of a public official, by what he does in public office and in no other way.

I shall pay but very little further attention in my remarks to the law in regard to impeachable offences, but refer you to the briefs that have been heretofore submitted upon this subject, which seem to me to uncontradictably establish the law to be, not only now, but as it has been for generations, that no man could be im-

peached and removed from office except for official misconduct in office.

I owe a duty to the respondent, to this Court and to the State, and, in discharging that duty I am somewhat embarrassed as how to express some thoughts that have come to me without giving offence. Please believe me that, in what I am about to say, I intend no criticism of any man's conduct, I impugn no man's motives, I intend to cast no reflection upon any man's integrity, but I feel that I must indulge in some reflections as to the nature of this tribunal in some respects.

In one of my arguments before you — I think the first one — I spoke of the difficulty of being intellectually honest, honest with one's self, and I think I illustrated — if I did not, I will now, by the difficulties a lawyer has when a client comes to him for advice upon some given proposition. It is to the interest of that client to have honest, accurate advice. It is to the interest of the lawyer to give it; and yet, with the insensible proneness of the mind to help out the client, those decisions, those interpretations of the statute that seemed to be beneficial to the client make more of a lodgment and a greater weight in the mind of the attorney than those adverse to his client. So, too, when a question of law is presented to a judge upon the Bench, with some preconceived opinion in regard thereto — perhaps obtained years ago, when a lawyer, possibly even when a law student — when he comes to examine that case deliberately for the purpose of passing judgment, those decisions, those interpretations of the law and of statutes which are in accord with his preconceived opinion have more effect upon his mind than those that are against that preconceived opinion.

And that is what I mean by the difficulty of being intellectually honest. And hence it is that I feel a sense of embarrassment and difficulty in discussing the cause of this respondent against a tribunal, so many of its members, I say it with all respect, not prejudiced, but predisposed against his case and against him; some by reason of opinions previously formed upon a partial investigation and consideration of the facts.

To such members of this tribunal I say that your bounden duty is to lay aside all previously formed opinions, formed without due

consideration, formed without discussion, formed without hearing what was to be said in favor of the respondent, and decide this case as if you had heard it for the first time; and bearing in mind that you have taken your solemn oath to do impartial justice between this Assembly who have impeached the respondent, and the respondent himself.

Again, some of you are members of a powerful and imperious political organization, that has kept the respondent in public life for years and has placed him where he now is in more than one respect. Differences have arisen between that organization and this respondent. Many of its members believe him to be ungrateful and disloyal. Who is right and who is wrong I know not; whether the allegiance and loyalty demanded by that organization came in conflict with the allegiance and loyalty that he owed to the State I know not; whatever the causes of these differences may be with that organization, you are bound to disregard them. He is not on trial for disloyalty; he is not on trial for ingratitude; and you have taken a solemn oath to try him impartially upon the charges here brought against him and nothing else.

Then there is another class of judges, men with whom he has had personal controversies, toward whom he has used abusive and threatening language; some of you he said he would drive from public life. I have no justification for the language used. It was wrong, particularly when addressed by the Executive of the State to members of a co-ordinate branch of the Government, but you are to cast aside all personal feelings, disregard all personal controversies, clear your minds of every prejudice, every passion, and every feeling, because he is on trial for none of these things; and you have sworn to pass judgment upon this case impartially.

Then there is another class of people who think as the late learned Chief Justice, he is unfit for public office by mental equipment, personal habits, and political ideals. That by reason of all these things he is utterly unfitted to hold the high and dignified position of Governor of this great State.

But he is not on trial for unfitness for office. The people passed upon that. Hear what Lyman Trumbull, the one to whom I adverted a moment ago, said when he was giving his reasons for breaking away from the great party that had sent him and placed

him in the Senate and made it possible for him to be a judge in that great trial, in giving his reasons for voting for the acquittal of Johnson:

> "To do impartial justice in all things appertaining to the present trial according to the Constitution and laws is the duty imposed on each Senator by the position he holds and the oath he has taken; and he who falters in the discharge of that duty, either from personal or party consideration, is unworthy his office and merits the scorn and contempt of all just men."

Of all these things that I have referred to, well calculated to predispose you against this respondent, for none of these things, I say, is he on trial. The spirit of fair play that should characterize the conduct of every man in public life towards his political adversary, that requires him to play the game according to the rules, that requires a man, a political leader, when he has made a mistake in putting a man into public office, to smile and bear the weight of his error without wincing; and not attempt to remove him from office by unlawful means to remedy the evil, but not to repeat the mistake again. And the highest sense of honor that should actuate all high minded men requires that you men free your minds of all preconceived opinions and personal feeling, and determine whether you honestly believe he has been wilfully guilty of the offenses charged against him.

Nay, more — the solemn oath that you have taken before Him to whom you yourself must some time appear for judgment, requires you to cast out all prejudice, all ill feeling, all passion, and judge this man upon the law and upon the facts as applied to the law, and nothing else.

Again, there is little sense of embarrassment in what I am about to say. In my first address I stated that not only was the respondent on trial, but the Court itself was on trial in these proceedings. The Presiding Judge has stated more than once during the progress of this trial, that an impeachment trial is unlike any other, and the strict rules of evidence that are observed in ordinary civil and criminal cases have not been observed. And it seemed to us that in refusing our last motion to dismiss certain of the articles of impeachment, the rule that requires a prosecutor to establish the

guilt of the person prosecuted had been reversed and the burden placed upon us to establish the respondent's innocence.

What the Presiding Judge has said with reference to impeachment trials being different from all other trials is true in more than one respect. They are peculiarly cases where the decision must be in accord with public sentiment.

If the public sentiment, by a sense of justice, is offended by the composition of the court, or by the decisions it makes, a blow is given to the confidence of the people in the due administration of law, from which it takes a long time to recover.

Do not misunderstand me. I am not one of those who believes that our courts of justice, in administering the law, should depart one hair's breadth from what they believe to be the law. Still the courts, not only for their own preservation and protection, but for the public good, must not only decide right, but it must do it in such a way that the people will believe it to be a right decision.

Writers upon impeachment speak of them as being very largely political proceedings against men in public life, where political animosities and partisan feelings are aroused for and against the present judge. In a tribunal composed entirely of Senators, as in the case of the trial of President Johnson, like tribunals existing in almost all the other States in this Union, the manner in which they make the decisions, and the decisions themselves, perhaps arouse very little feeling against the administration of justice, because they regard them as political decisions and not judicial decisions. But, in a tribunal like this, composed of the justices of the highest court of this State, for the administration of ordinary civil and criminal justice, and composed of Senators together, a decision made by such a court, if not in accord with what the people believe to be a right decision, strikes a deadly blow at the confidence of the people in the administration of their laws.

It took many, many years for the Supreme Court of the United States to recover from the effect of the division upon party lines between the justices of the Supreme Court who served upon the Electoral Commission.

Now, without any disloyalty to William Sulzer, I may say that he is a mere incident in these proceedings; that my effort

is very largely in behalf of the dignity and honor of the State, and the preservation, if it can be preserved, of the confidence of the people of this State in the administration of the law. I have got beyond the time when political honor and preferment is for me, but I have a deep respect and affection for the State.

I have a great respect and affection for the highest tribunals of this State, and of the individual members, and I want to see nothing happen, nothing happen that will impair the confidence of the people in this tribunal, and my interest is that, by no decision or by no manner of arriving at the decision, should any reflection be cast upon the administration of justice or any new impetus given the feeling which we cannot disguise from ourselves that at present exists against the administration of justice; stirred up, enlarged upon by demagogues and political leaders of singular ability and disingenuousness. With these things in mind, it seemed to me that this is peculiarly the time and peculiarly the case when the court should not go beyond what is written in the law. It is of the gravest importance that the independence of the three great departments of government should be preserved, the legislative, the judicial and the executive; and before the legislative and judicial departments should combine to overthrow the executive, the law therefor should be clear and plain.

The question of fact will always vary in the different cases, but the law itself should be clear and definite; and no loose or liberal construction should be given to it to accomplish the overthrow of any department of the government or the occupant of any department.

In the very learned brief prepared by the counsel for the managers, a list of over seventy cases of impeachment is set out. Not one of them but what is for official misconduct. Some two or three for past official misconduct, but still misconduct in office. Not a single one of these cases is an impeachment for acts committed when the person impeached is a private citizen. Not one but where he was an occupant of some public office when the misconduct occurred. Judge Parker, in his argument, concedes that articles I, II and VI were acts performed out of office, while Governor Sulzer was a private citizen, before he entered upon the discharge of the duties of the office of Governor. Now, the public

policy of this State, as illustrated by section 7 of article X of the Constitution, requiring provision to be made for the removal of public officials for misconduct or malversation in office, section 12 of the Code of Criminal Procedure provides that this court shall have jurisdiction to try impeachments for willful and corrupt misconduct in office. In 1854 the judiciary committee of the Assembly reported, and the Assembly ratified its reports, that no one could be impeached except for misconduct in office.

In 1905 the Judiciary Committee of the Senate reported that impeachments would lie only for misconduct in office and the learned Chairman of that Committee supported it in a learned and very able opinion.

In the Guden case, under the power of removal, much broader than that of impeachment, the Governor in removing him found he was guilty of official misconduct in taking the oath of office, it being a false oath in entering office and the Appellate Division upheld the decision, on the ground, among other things, that it was a corrupt agreement while entering into and before becoming a public official to be performed thereafter, and in the Court of Appeals the only Judge discussing the facts said:

> " There must be a charge of some official misconduct on the part of the officer and that in that case he was shown not only to have made a corrupt agreement before entering his office but that he carried it out thereafter."

Now, with this history of impeachments in this country, the past public policy of the State, that this Court should go further than has ever before been gone in American history, should go further than had heretofore been written in the law and convict for acts done while a private citizen, upon the extreme slender and tenuous theory that in making a statement of election expenses that such statement had some connection with the public office which made it official misconduct, when the defeated candidates have to make a like statement, which statement is not and cannot be made a condition of his entering into office, because the Constitution itself provides the only test for entering office, and then to thrust him out after he has entered into office because of this false statement you could not require him to make as a

condition for going in, is violating the provisions of the Constitution and doing that by indirection which it prohibits doing by direction — I say that with this history of impeachments and the law hitherto related, that before such an extension of the power of impeachment to acts done before taking the office and before becoming a public official, it will be regarded as reaching out for a victim and the court did not determine but made the law to fit the case; and it will do more than anything ever done or that can be done in this State to bring about the recall of Judges and judicial decisions or it will at least cause a reconstruction of our whole judicial system.

This is not mere idle declamation for the purposes of this case, may it please the Court, but it is the result of careful investigations. Those people who think there is no feeling of unrest in regard to the courts, the administration of the law and of lawyers, are not honest with themselves or are not acquainted with the public condition of affairs. I was charged with investigating this subject nearly a year ago and the conditions that I found existing, the public feeling, I dare not report in full for fear of increasing that public discontent. Don't blind yourselves. Stop and think, the enormous vote cast last year upon a platform attacking our courts and proclaiming belief in the recall and the recall of judicial decisions. So I say that it behooves us that this case shall be so decided in such a manner that the people will believe and understand, and lawyers too, because many of them share in this feeling I speak of, that this court has not gone beyond the law as it has been written for over 200 years in England and this country and never been violated hitherto.

I am not going into any details or detailed analysis of the evidence in this case. That has been very largely done by my associate who opened this discussion and renders it very largely unnecessary.

Then, too, I bear in mind that this Court is composed of judges, lawyers, accustomed to analyzing evidence, many of them with greater ability to do so than I possess.

Of those who are not lawyers who are accustomed to considering public questions and listening to arguments to analyze them and see what they mean and see what they lead to, and I recognize

it is not an ordinary jury that pass upon the evidence as they hear it and hear it discussed, but you have the volume of evidence before you in printed form, and I am pleased to note most of you have been taking careful notes of it as the trial has progressed, so you will have it before you for your deliberation and investigation, and anything I might say except in the most general terms would hardly be worth saying to you or consuming my time.

But some discussion perhaps is needed. I say I shall not discuss any further than I have done, the question of whether you can impeach for acts committed before entering into office. But the learned former Chief Justice has gone the full length on that question, as I stated before, and leaves very little for us to say in relation to the practical abandonment of the contention of the counsel heretofore made, that this act of making a statement, this act of taking money contributed to him, all happened before taking office, and, unless you come to the conclusion that a man can be impeached for acts done before he enters upon the office, there is very little necessity for entering into any elaborate discussion of that question.

I have some things to add to what Judge Parker said, in my answer to it, about impeaching a governor for acts done before he enters upon the duties of his office.

Again, when Judge Trumbull, when deciding as a judge, and giving his reasons therefor:

> "Once set the example of impeaching a president for what, when the excitement of the hour should have subsided, will be regarded as insufficient causes, and no future president will be safe who happens to differ with a majority of the House, and two-thirds of the Senate, on any measure deemed by them to be important, particularly if of a political character, blinded by partisan zeal, with such an example before them, they will not scruple to remove out of the way any obstacle to the accomplishment of their purposes, and what then comes of the checks and balances of the Constitution, so carefully devised and so vital to its perpetuity?"

Apply the same language to impeaching Governors in our State, where there is no law up to this time warranting his impeachment for acts done while a private citizen.

Now, I will come to a discussion of the several articles of impeachment. My associate in his brilliant and exhaustive argument reviewed all of those articles and has left me but little to say, but I will briefly consider them. Taking up first those articles alleging offenses while he was in office, the third, fourth and fifth articles may be very largely considered together. They charge the respondent, Sarecky, Colwell and Fuller from testifying before the Frawley Committee. First, I will read the fourth:

> "That the said William Sulzer, then being the Governor of the State of New York, unmindful of the duties of his office, and in violation of his oath of office, was guilty of mal and corrupt conduct in his office as such Governor of the State and was guilty of suppressing evidence and of a violation of section 814 of the Penal Law of said State, in that, while a certain Committee of the Legislature of the State of New York named by a concurrent resolution of said Legislature to investigate into, ascertain, and report at an extraordinary session of the Legislature then in session, upon all expenditures made by any candidate voted for at the last preceding election by the electors of the whole State, and upon all statements filed while such committee was conducting such investigation, and had full authority in the premises, he, the said William Sulzer, practiced deceit and fraud and used threats and menaces, with intent to prevent said committee and the people of the State from procuring the attendance."

Now, what deceit, what fraud, what threats? Is there a particle of evidence in the case? Take them up and consider them.

Sarecky had been secretary to the Governor, had been in his employ for years; now, a deportation agent to the Hospital Commission. You will recall the disturbance that was made here in the beginning of the trial, Sarecky could not be found; they wanted Sarecky; he was being concealed, and you, who read the newspapers, unlike the jurors in ordinary cases from day to day know that they say they were in hot pursuit of Sarecky, but could not find him, when it appears in the testimony that he was all

the time staying in the city of Albany at the so-called Tub on State street, excepting when he was out with Hennessy, and then seeing the charges that he could not be found, published in the Buffalo papers his whereabouts and where he could be found, and walked into the very room here and was subpoenaed. And then the clamor that was made about him in the opening, that here was an incompetent man taking the place of a doctor, and it did seem rather shocking that a layman should be put in position to discharge the duties that a medical officer ought to discharge, but when it appeared that the very law under which he was appointed provided for the appointment of a lay deputy, and that instead of displacing a doctor, no lay deputy had ever been appointed until Sarecky had been appointed, and then the recommendation that was given to the Hospital Commissioners, showing his peculiar availability, and you must bear in mind that there is a presumption that those hospital commissioners were doing their duty, the presumption that always pertains to the case of a public official or a public body, and there is nothing against it in this case to show that they were not still, the recommendation that they gave him, being acquainted with several languages, which made him peculiarly available, and peculiarly fit to discharge the duties of that place where they have so many alien insane whom they have to deport to their home countries.

Well, now, the cross-examination of that brilliant lawyer and astute cross-examiner, my friend Mr. Stanchfield, demonstrated the fact that he was peculiarly fitted for this place; that he was acquainted with these various languages; that he knew the duties of the office, which are comparatively simple, provided you understand the language of the people and of their families and their connections to whom you wish to return them.

Now, what was done? What is the evidence that this respondent did to prevent Sarecky from testifying? Not one particle. It is absolutely barren. Not a word, not a syllable, in the testimony that the respondent ever even intimated or suggested to him that he must not go before that committee to give testimony. All built up upon the slender theory that because he brought about — if you please, although there is no evidence of it in excepting Sarecky applied to him for a position — that

because he brought about the appointment of this man, who had been with him for some ten or twelve years, to an office that he was fit for, that thereby he bribed him, without any intimation, without any suggestion, not to go before the Committee.

But he did go; he did go. And what did he tell them? Why he told them that he would testify provided he could have counsel, so that the whole story should come out. He had seen Mr. Marshall's opinion, or at least he had been told of it by Mr. Hennessy, that the Committee had no power of investigation, that it had no authority to hold him before it. And yet, with that opinion, with the knowledge that this great lawyer had given this opinion that the organization of that committee was illegal, and that they did not have the power to examine, still he went before them, offering to testify, providing they were to permit him to have counsel so that every phase of the case could be laid before them.

It is a little hard to be compelled to feel that it is your duty to discuss these things, to fight windmills to maintain the innocence of your client, instead of rebutting evidence of the other side, saying that he is guilty. It is a little difficult I say, and exasperating. But before I get through with you — still I can come to it in another place.

Then there was Colwell. The same disturbance was made over Colwell. A demand was made of us to produce Colwell. A demand was made of us to let them know where he was. The demand was peremptorily made. We were to let them know the next morning. Now, we thought we wanted Colwell. We were on the lookout for Colwell. We finally located Colwell, and the public statement made by me in the court — and I repeat it again now,— was to the effect that he was in a sanitarium; that he was informed that there was a warrant out for him in this State to arrest him for not appearing before that committee; and that he would come into this State, provided he was guaranteed that he would not be arrested or molested on that warrant.

I made the proposition to the other side. They were to let me know the next morning. Not a lisp of it from that day to this.

This case has been tried upon these proclamations in the newspapers creating a prejudice in the metropolitan mind, and almost necessarily creating some degree of mistrust at least in the minds

of these members of the Court who were continually reading the papers and accounts of newspaper correspondents as to what has taken place at this trial.

But what was there about Colwell? Why, there is evidence in the case that he bought stock for William Sulzer, and that some time while the Frawley Committee was in session — I have forgotten the day — some time when it was in session I think he had been subpoenaed, is my recollection of the evidence, to appear before it. He told Mr. Gray, and the evidence seemed to us utterly incompetent and improper, he told Mr. Gray that he was going to Albany to see William Sulzer, and he has not appeared since.

Why, who of you would convict a man of petty larceny upon any inference to be drawn from that testimony? Not one syllable. Not one word that he even saw Sulzer; or, if he did, that Governor Sulzer suggested that he not go before the Committee.

Then Fuller, I think the charge is that Fuller was bribed to keep away. How? When? Where? By whom? You saw him upon the stand. I will not describe him; he was sufficiently described by Mr. Marshall in a review of what took place then and there. He first refused, not at the suggestion — he denies that the Governor even made a suggestion that he do not appear before you, but if he did want to defend his position as a broker not divulging the secrets of his client, if he himself wanted to make the fight upon that proposition he would furnish him an attorney. I presume my learned friend, who had prepared an opinion upon that subject. Oh, he said, he would employ his own; he had his own attorney. He went before the Committee, declining to divulge his dealings with his client. Then, upon a further day, after it was stated before the full committee, there had been a conference with Governor Sulzer and his legal adviser and he was informed by Mr. Sulzer to disclose everything.

As stated by Judge Olcott, the privilege of the client was entirely waived and went on to give the testimony.

Now, there are a couple of others not charged in the indictment, but it shows you the atmosphere that was attempted to be created in this case.

You recollect the disturbance that was also made here about Gray of whom some of these stocks had been purchased, that

Gray could not be found. I do not know, I have forgotten whether they called upon us to produce Gray or tell whereabouts he was.

Mr. Marshall.— No.

Mr. Herrick.— My friend says no, but there was a good deal of talk in the court room and witnesses inquired about. Finally, they got Judge Bell upon the stand to give some information of no importance.

That learned gentleman ventured his assistance to both sides, you will recollect. He was counsel to Gray and he said to his personal knowledge Gray had been at his office almost daily for the past two weeks. Asked if he would produce him he said he would telephone to him. I do not know whether he telephoned or not and it is not in evidence, but the next day Gray appeared. It appears from his testimony that he had been in a regular place of business for two weeks and when these learned gentlemen were prating that he could not be found, and there was something presumably that he had to conceal in reference to these stock transactions.

And Peck! Peck, my friend described Peck yesterday. The description fitted him like a glove, excepting in one respect and I will try to fill it out. His testimony was for the purpose of showing that the Governor was trying to keep him away from testifying. Nothing in the articles of impeachment to that effect. No! It was simply to bring discredit upon the respondent; to show that he was a liar, to show that he was secreting contributions.

Who is this Peck? I will briefly describe him — appointed by Sulzer, supposed to be his faithful friend, supposed to be loyal to him, to whom did he first tell his story, to whom did he communicate this evidence, to whom did he divulge this secret communication between him and the man whose beneficiary he was? Who disclosed it to the Board of Managers or counsel for the other side?

In quite a long experience at the Bar and upon the Bench, defending people charged with crime, prosecuting people charged with crime; having people charged with crime tried before me, I have come to the conclusion, as Aaron Burr did, that the meanest criminal is the man who turns State's evidence.

Now, let us come to some more of these absurd articles. The 7th article I shall briefly describe. The members of the Court are tolerably familiar with these articles of impeachment. Using the power and influence of his office to coerce and bribe members of the Assembly, members of the Senate into voting for bills in which he was interested, in return for which they were to have his signature to bills making liberal appropriations for the benefit of their districts.

Spencer G. Prime, member of Assembly, Thaddeus Sweet, another member of Assembly. You will recall that the attempt was made to coerce and bribe Mr. Prime and Senator Emerson.

Now, the attempt to coerce Senator Emerson seems to me to be pretty difficult. There is not a particle of evidence in this case that he was coerced and I have yet to see anything in the evidence to show that the Governor so mistook his man as to offer him a bribe.

When he came in to see him about this good roads bill he asked him if he had read his primary bill. The Senator said he had it in his pocket. I don't know whether this offer of a bribe or coercion was merely to induce Senator Emerson to read that bill or whether he was expected to vote for it after he had read it.

And then he says to him, I stand by my friends, or words to that effect; or was it, "You for me and I for you?" "You for me and I for you." To Sweet he says to "Smooth over Taylor," "Go and see Taylor and smooth him down." Taylor is the Governor's legal adviser. He passes upon the question of the legality of bills, and advises the Governor as to whether they are legal or not, and he advised him to see him and smooth him down. Mr. Sweet attempts to smooth Taylor down, and finds that that bill is in another department, to be passed upon, and it is Sweet that he tells "I stand with my friends." Why, gentlemen, it is almost too ridiculous to talk about. We all know, as practical men, what is being done every day in legislative matters, not only in Albany, but in Washington, from time immemorial. No man who is fit to be an executive, who is interested in procuring legislation to go through, in what he believes to be the interests of the people, but what uses more or less of the influence of his office to induce members of the legislative bodies to agree with him.

What is being done for the last few months in Washington? Yet would anyone say that President Wilson should be impeached because forsooth he is holding up political appointments in various States of the Union until he sees what Senators and Members of Congress will do with his currency and tariff bills to carry out the pledges of the party platform? Whoever thought of impeaching the wielder of the Big Stick for the influence that he used over member of Congress when he brought the Senate of the United States to its feet, and humiliated the House of Representatives by the exercise of executive power and influence.

Go back in the history of this State and in the history of the United States for the last 50 years, and where is the executive that has not attempted — not by bribery — gentle coercion, if you please, to bring about the enactment of those measures that he believed he was pledged to carry out and that he believed his party platform obligated him to carry into effect and enforce?

To say that there was bribery, coercion attempted in either of these cases is the height of absurdity. I refuse to discuss it longer.

The next article is equally absurd: The Stock Exchange bills. I think the late learned Chief Justice did not discuss those. He was evidently ashamed, evidently ashamed to do it. The ridiculous proposition that a man who was the owner of stocks, who has not sold them short but is the owner of them absolutely, is the absolute owner, bought them for cash, not holding them upon margin, endeavored by these bills to affect the stocks in his hands.

The supposition, in the first place, that regulating the manner of doing business on the Stock Exchange would affect the value of these stocks if they traded in them, is an absurdity. If not an absurdity, the only way that it could affect them by the difficulty that surrounds transactions in stocks would depreciate their value and thus cause a loss upon those stocks to the man who held them. It is too simple to discuss. I am amazed at the Managers, for they are astute, that they ever had the audacity to place them before the court as an article of impeachment by which the Governor of this great State should be removed from office and disqualified. Why, to use the language of a late Associate Judge of the Court of Appeals, the evidence to support these charges that I have so far

reviewed is of that kind, to use his language, as to be insufficient "to hang a yellow dog."

Next comes in the order that I have arranged for myself, the discussion of the first, second and sixth articles of impeachment, all relating to acts done before entering upon office, relating to moneys received by him and the statement made by him in relation thereto.

You will recall that he is alleged to have received large sums of money for which he did not account, make a false statement. He is charged in the second article, with committing perjury and swearing to that statement; and he is charged in the sixth article, with stealing these contributions.

Campaign contributions are of a two-fold character. One, made to a party committee for the support of a cause, as well as candidates, for the purpose of getting a principle or principles adopted. The other kind of a campaign contribution is made for the benefit of the person who receives it. Undoubtedly, in the first instance, to be used for campaign purposes; but, having been given to him for his personal benefit in the campaign, if you please, it becomes his money. And whoever heard of the return of a campaign contribution, either from a political committee or from a candidate?

What shall he do with it, with the money that he has received that is not necessary for the expenses of the campaign. Shall he ascertain and make a note of all his contributors, and distribute the balance pro rata amongst them? What is the practical thing to do? The Governor has illustrated it.

While I am not a defender, gentlemen, of the ethics of keeping campaign contributions by a candidate, I am not a defender of the morality of that thing, or the good faith; I am not a defender of persons who will consent to receive campaign contributions in any large amount; but all those things are a matter of ethics, a matter of good taste, and possibly of good morals. But, if my contention is correct, you cannot impeach and remove a public official because his ethical standards do not comply with yours; you cannot impeach and remove a public official for a lack of good taste. You cannot impeach and remove from political office a man for immorality, notwithstanding the learned argument of

my friend, Judge Parker. If a candidate is wealthy, these contributions are ordinarily made by him; if he is a candidate who is supposed to be in poor or straitened circumstances, those contributions are made to help him out.

Public men in the past, as illustrated to you by Mr. Marshall, have not been above receiving assistance from wealthy friends. The Boston merchants kept Webster in public life. Jefferson received gifts. Charles James Fox was kept in public life by gifts received. McKinley's debts were paid off that he might become a candidate for the presidency.

With these examples before him is it any wonder that a man of the respondent's training, mode of thought, lack of business habits, financial necessities, thought there was no harm in using the money that had been given to him, not only for the purpose of the campaign, but also to aid and assist him in repairing his broken fortunes? Many of these contributions were evidently intended to relieve him from financial embarrassment, not only during the campaign, but during the time when he should come into the performance of the duties of this great office with its wholly inadequate salary. Using moneys so given to him for his own purposes and uses was not a betrayal of any cause or any principal, simply for the benefit of the person for whose good it had been contributed, given to him to his own personal benefit, if you will, given to him because he was a candidate, but if not needed as a candidate, then for his own personal benefit; none of the contributors ever expected that the money that they contributed or any part of it would be ever returned to them. They were absolute gifts to him, no matter for what purpose to be used. Most of the witnesses you will see say that they placed no limits upon its uses, and if the necessary lawful expenses of his campaign did not render it necessary to expend all the money given to him, certainly no fault can be found with him that instead of using such money to buy votes with, he used it to buy stocks, or for any other purpose that would be beneficial to him. The purpose for which the money was given, in the language of Justice Conlon, was to "buy a hat and a new suit of clothes."

Now, let us examine what these contributions were and what they amounted to.

I have a detailed statement here which I will not read. It has been prepared with care with reference to each page, and I wish it to be printed as part of my remarks for the convenience of the Court when they come to examine this case.

NAME	Page	Date	Check or cash	Amount	When, how and to whom delivered	Disposal	Exhibit and where printed	Remarks
Barthman, Wm. (reported)	1091	Oct. 10, 1912	Check	$50 00	Mailed to Sulzer Oct. 10, 1912	Sarecky's account	126 printed at 1092	Letter inclosing check stated "Contribution towards expenses of personal campaign." (1091)
Benedict, E. C		Oct. 10, 1912	Check	250 00		Sarecky's account	31 printed at 705	No testimony given.
Brady, Daniel	730	Election night	Check	100 00	Delivered to Judge Conlon at Manhattan Club	Sarecky's account	Check destroyed	Conlon told Sulzer it was "a contribution to help him along in his campaign." (712) "To use this money for his personal purposes, clothing, hat, anything he might want to spend it for." (727) "Did not limit use of it in any way." (684)
Coler, Bird S	650	Oct. 24, 1912	Check	100 00	Mailed to Sulzer Oct. 24, 1912	Sarecky's account	37 printed at 707	Wrote letter in which he stated that Sulzer was sure of election and did not need much money. (651)
Conlon, Lewis J. (reported as $110)	799		Cash	100 00	Eight or ten days after convention	Laid on breakfast table		Did not limit use of it. (684)
Croker, Richard, Jr	799	Oct. 16, 1912	Check	2,000 00	Delivered to Sulzer at office October 16, 1912	Endorsed and cashed by F. S. Colwell		For any personal expense in connection with the campaign or anything. (805)
Cox, John W	780	Oct. 7, 1912	Check	300 00	Delivered to Meyers	Deposited Oct. 16, 1912, by Boyer, Griswold & Co	67 printed at 684	Given for Sulzer's personal benefit. (790)
Delehanty, John W	681	Oct. 14, 1912	Check	110 00	Delivered at Sulzer home	Sarecky's account	54 printed at 683	Did not limit use of it. (684) Told him it was for his personal purposes. (727)
Doelger, Peter	618	Oct. 14, 1912	Check	250 00	Delivered to Sulzer at office October 13, 1912, by Dersch	Sarecky's account	34 printed at 706	Told Sulzer it was for campaign purposes. (639)
Dooling, John T	738	Oct. 15, 1912	Check	1,000 00	Delivered to Sulzer at Dooling's office October 15, 1912	Boyer, Griswold & Co.	61 printed at 740	"I understand you need help and I hope this will help you." (739)
Elias, William J. (reported)	618	Oct. 10, 1912	Check	100 00	Delivered to Sulzer at office October 10 or 11, 1912	Sarecky's account	30 printed at 704	"For campaign purposes." (639)
Elkus, Abram I	569	Oct. 4, 1912	Check	500 00	Mailed to Sulzer Oct. 4, 1912	Farmers' Loan & Trust Co	11 printed at 571	"To aid in expenses of your campaign." (570)
Garber, Henry C	983	Oct. 3, 1912	Check	100 00	Mailed to Sulzer Oct. 3, 1912	Sarecky's account	101 printed at 983	Wrote "I congratulate you upon your nomination. I herewith enclose check for $100. I hope you will be elected." (984)

Gwathmey, J. T.....	762	Nov. 1, 1912	Check.....	100 00	Mailed to Sulzer Nov. 1, 1912..	Sarecky's account....	38 printed at 708..	"Hand to the people who are conducting your personal campaign as I wish the money to be devoted to that cause alone."
Gray, John Boyd (reported as $50).....	1075	Between Oct. 25th & Nov. 5, 1912....	Check and cash..	50 or 100 cash....	Payable to Sulzer, delivered to Colwell.....	.....	.....	No testimony as to use.
Hawley, Geo. C.....	624	Oct. 18, 1912	Check.....	250 00	Procured by Stadler, delivered to Sulzer.....	.....	.....	Told Sulzer that they were contributions I had requested from my friends towards his campaign. (630)
Hoffman, Peter & Wm.	618	Oct. 12, 1912	Check.....	250 00	Cashed by Stadler, given to Sulzer.....	.....	42 printed at 626..	Contribution that I had requested from friends towards his campaign. (630)
Luchow, Augustin....	618	Oct. 28, 1912	Check.....	200 00	Cashed by Stadler, given to Sulzer.....	.....	41 printed at 625..	Contribution that I had requested from friends towards his campaign. (630)
Lynn, John.....	....	Oct. 10, 1912	Check.....	500 00	.....	Boyer, Griswold & Co.	56 printed at 685..	No testimony.
McCombs, Wm.....	....	Oct. 5, 1912	Check.....	500 00	.....	Sarecky's account....	35 printed at 705..	No testimony.
Meany, Edward.....	1149	.....	Cash.....	10,000 00	Given to Sulzer 8 or 10 days after convention.....	.....	.....	Loaned Sulzer $10,000 in cash (1150). Had loaned him before and had been repaid. (1154)
Morgenthau, Henry D.....	526	Oct. 5, 1912	Check.....	1,000 00	Given and payable to Sulzer...	Farmers' Loan and Trust Co.....	10 printed at 556..	Nothing said as to use to which he was to put the $1,000. "I did not intend to limit him as to the use he was to make of the $1,000." (528)
Meyers, Theodore W.	....	Oct. 10, 1912	Check.....	1,000 00	.....	Boyer, Griswold & Co.	60 printed at 714..	No testimony.
Neville, Geo. W.....	771	Nov. 1, 1912	Cash.....	200 00	Delivered to Sarecky Nov. 1, 1912.....	.....	.....	Told Sarecky it was $200 Neville requested Mandelbaum to hand Sulzer. (773)
O'Brien, John F.....	821	Nov. 2, 1912	Check.....	50 00	Mailed to Sulzer with letter....	Sarecky's account....	39 printed at 708..	Letter said, "I enclose herewith my check for $50 as a contribution." (823)
O'Dwyer, Edward F..	819	Oct. 10, 1912	Check.....	100 00	Left at Manhattan Club with porter in envelope without letter, payable to Sulzer.....	Boyer, Griswold & Co.	71 printed at 821..	Envelope contained nothing but check. Never talked to Sulzer about the contribution. (820)
Patterson, Frank M..	1011	Oct. 10, 1912	Cash.....	500 00	Given to Sulzer in person at his office.....	.....	.....	"This contribution I considered as a personal one and not as a political contribution."

NAME	Page	Date	Check or cash	Amount	When, how and to whom delivered	Disposal	Exhibit and where printed	Remarks
Peck, Duncan W.....	776	Oct. 18, 1912	Cash.....	$500 00	To Sulzer at Rensselaer Inn, Troy.....	.....	.....	"I would like to give you this for your campaign." (777)
Pinkney, Cornelius S..	975	Nov. 1, 1912	Check.....	200 00	Delivered to Sulzer at office, payable to Sarecky.....	Sarecky's account....	100 printed at 977..	Asked Sulzer whether he was in need of any money. (976)
Potter, Mark W.....	678	Oct. 10, 1912	Check.....	200 00	Delivered to Sulzer by Conlon 8 or 10 days after convention, at Sulzer's house.....	Cash received by check	53 printed at 711..	"Did not limit the use of it in any way. Told Sulzer to use the money for his personal purposes, clothing, hat, anything he might want to expend it for." (727)
Rush, Thomas E.....	....	Oct. 31, 1912	Check.....	500 00	.....	Sarecky's account....	28 printed at 704..	No testimony.
Ryan, Allan.....	1134	Oct. 12, 1912	Cash.....	10,000 00	To Sulzer at Sulzer's office.....	.....	.....	Requested the money for his personal campaign. (1134)
Schiff, Jacob H.....	518	Oct. 14, 1912	Check.....	2,500 00	Payable to Sarecky.....	Sarecky's account....	7 printed at 556..	Sulzer asked me, "Are you going to contribute to my campaign and I said, 'Yes, I shall be willing to do so.'" (520) "I meant Sulzer might use it for any legitimate purpose."
Spaulding, Lyman....	678	Oct. 10, 1912	Check.....	100 00	Delivered to Sulzer by Conlon 8 or 10 days after convention.	Boyer, Griswold & Co.	55 printed at 684..	Did not limit the use of it in any way. Told Sulzer to use the money for his personal purposes, clothing, hat, anything he wanted to spend it for. (727)
Sorenson, John S. (Geo. W. Crossman).....	816	Oct. 9, 1912	Cash.....	2,500 00	Delivered to Sulzer at office Oct. 9, 1912.....	.....	.....	Told Sulzer, "I was sent by Mr. Geo. W. Crossman to hand you this." (818)
Stoiber, A. (Ezekiel Fixman).....	654	Oct. 19, 1912	Check.....	100 00	Mailed to Sulzer.....	Sarecky's account....	36 printed at 664..	Letter enclosed with check from Stoiber, Fixman stating he had been directed to enclose check with the enclosed letter, contents not shown. (654)
Strauss, Frank V.....	656	Oct. 5, 1912	Check.....	1,000 00	Payable to order of Wm. Sulzer.	Boyer, Griswold & Co.	51 printed at 657..	Only word was that Mr. Strauss had directed them to forward check for $1,000. (657)
Tekulsky, Morris.....	590	Oct. 16, 1912	Check.....	50 00	Delivered at Tammany Hall to Sulzer Oct. 16, 1912.....	Sarecky's account....	32 printed at 705..	"Here is a little contribution to your campaign fund." (611)
Uhlman, Simon.....	675	Oct. 18, 1912	Check.....	300 00	Mailed to Sarecky.....	Sarecky's account....	32 printed at 705..	"This is my voluntary contribution to your campaign fund." (677)

I will briefly consider them. The statement that was handed around last night is inaccurate in many respects. It is not a true statement of the contributions received. It is not a true statement of the loans made to this man. It is not a true statement of the absolute gifts made to this man, and I desire to call your particular attention to it and have you examine it and see whether it is not a misrepresentation to mislead you and the public as to what this man received and what he did not, and who he received it from. You will bear in mind the very great talk that has been had about the vast amount of campaign contributions that he received.

When you come to examine the evidence here, as to actual campaign contributions — I am not speaking of the distinction attempted to be drawn between campaign contributions and those attempted to be given him without any limit, but all they claim to be campaign contributions. It is astonishing the difference there is between the proof they make and the claims and charges they make. I will go over them very briefly. My time is running on so rapidly that I don't know that I will recapitulate this as I expected to.

Mr. Marshall.— Hand it to the stenographer so it will be included.

Mr. Herrick.— This is the summary here.

CONTRIBUTIONS.

Schiff (p. 518). Paid $2,500. Payable to the order of Sarecky. Went to Mutual Alliance Trust Company. No limit as to use (p. 524). Thinks if Sulzer came in at any time for $2,500, would give it to him (p. 663.)

Mem. on check contribution towards Sulzer's campaign expenses. Placed on when given to Mr. Richards to identify check (p. 525).

No pretense that Sulzer used proceeds. Simply did not account for it. Question asked whether he would accept a refund (p. 673).

Morgenthau (p. 526). Check for $1,000. Sulzer told him he didn't want it because of doing so much for National Committee (p. 527). Nothing specified as to the use of the proceeds (p. 528).

Elkus (pp. 569-570). $500. Unquestionably for campaign

expenses. Proceeds went into the Farmers' Loan and Trust Company.

Tekulsky (p. 611). Paid $50. Many years president of the Liquor Dealers' Association. "Here is a little contribution to your campaign fund. Hope it will do you good." All said.

Stadler (p. 618, etc.). Obtained contributions from different persons. Peter Doelger, $50; William J. Elias, $100; Hawley, $250; Luchow, $200; Hoffman, $250. Got checks cashed, paid money to Sulzer. Sulzer requested it to be in cash. Total amount $1,400. Total contributions from friends towards his campaign (p. 630). Some checks taken by Dersch to Sulzer, who merely told him that Senator (Stadler) had given him those checks to bring down (p. 637). Again I said for campaign purposes (p. 638). Asked if I got any more checks to have them cashed (p. 640).

Bird S. Coler, $100. Check by mail (p. 650). Endorsed by Sarecky. Said to Sulzer sure of being elected. Not much use for money for campaign (p. 651). Endorsement of Sulzer a rubber stamp.

Stoiber, $100. Sent by Mr. Fixman for Stoiber. Received by Sarecky (pp. 654-655).

Strauss, $1,000. Pursuant to cable from Paris. No statement what for. Related to Mrs. Sulzer by marriage (pp. 657-659).

Uhlman, $200. Check payable to Sarecky (p. 677). Campaign fund. Deposited in Mutual Alliance Trust Company (p. 678).

Conlon. Took up contributions at Manhattan Club. Delehanty, $100; Lyman Spaulding, $100 or $110. Gave $100 himself (pp. 681-2-3). Mark Potter, $200; Brady, $100 (pp. 712-725). Was to use money for his personal purposes, clothing, hat, anything he might need to spend it for (p. 727). Understood that Sulzer was poor. Did not limit him in any way. Theodore W. Meyers, $1,000; John Lynn, $500. Does not appear in any way for what purpose this money was given. No witness was produced in relation to either of these persons. Simply evidence of their checks. It is significant, however, that Mr. Lynn was in the court room as a witness and has not been sworn (p. 684). So neither of these amounts can be fairly con-

sidered as campaign contributions. It cannot be inferred that they were from the mere fact that they were payable to Mr. Sulzer. Brady, $100 check handed to Judge Conlon at eleven o'clock election night (p. 1056). It could hardly be considered a campaign contribution at that time.

Dooling, $1,000. Check. Simply stated he hoped it would help him (p. 739).

Gwathmey, $100. To be devoted to Sulzer's personal campaign (p. 763). Endorsed by Sarecky. Went into Mutual Alliance Trust Company (p. 776).

Neville. Number of merchants raised fund for different candidates; Sulzer's share was $200 (p. 768). Given to man named Mandlebaum. Intent was for campaign purposes (p. 770). Mandlebaum gave it to Sarecky. Didn't tell him what it was for (p. 773). Went into Sarecky's account in Mutual Alliance Trust Company.

Peck. Claims he gave $500 bill to Sulzer (p. 777).

Cox, $300. Sent to Theodore W. Meyers, Treasurer, raising funds for William Sulzer (p. 781). Never spoke to Sulzer about it. Was given to spend for his personal use (pp. 790–796).

Croker, $2,000. Gave it as a personal and confidential matter. He supposed he would be under very heavy personal expenses. Supposed he was a poor man (pp. 802–3–5).

Crossman (Sorenson), $2,500. Currency. $100. Bills (pp. 816–818). Sorenson said he was sent by Crossman to hand you this. That was all that was said.

O'Dwyer, $100. Check left at Manhattan Club. No letter (p. 818).

O'Brien, $50, sent by mail (pp. 821–2). Did not say what for. Regretted he could not make it more. Hoped two years later to be in a position to contribute again. Went into Mutual Alliance Trust Company (p. 823).

Pinkney, $200. Gave check in person. Order of Sarecky. Sulzer said personal matter between himself and myself. Considered it as a gift. Did not intend to make any record of it (pp. 976–977).

Garber, $100. Check mailed from Ohio. Nothing said about its purpose. Went into Sarecky's account (pp. 983–984).

Patterson, $500. Gave personal contribution to him in addition

to contributions he had made to committees. No limit placed upon it at all (P. 1013).

Gray, $50. For campaign fund but no evidence of what was said to Sulzer (p. 1085).

In the check for $1,000 of Theodore W. Meyers there is not a particle of evidence of what it was for, what was told to Governor Sulzer when he received it, whether it was for campaign purposes, a gift or a payment for services rendered.

With the exception of the evidence that Dr. Cox gave that Theodore W. Meyers was acting as a sort of a treasurer to receive contributions and that he, Dr. Cox, sent him his check for $300 so that possibly we may assume that the check of Theodore W. Meyers represented collections that he had made. What those collections were, whether they embraced some of the smaller checks we have already set forth, it is impossible to tell.

Then there is a check of John Lynn for $500. What that was for does not appear. Mr. Lynn was present as a witness (p. 684), but was not called. Presumably as his evidence would not have been satisfactory to the prosecution.

RECAPITULATION.

Schiff	$2,500	Cox	$300
Morgenthau	1,000	Croker	2,000
Elkus	500	Crossman	2,500
Tekulsky	50	O'Dwyer	100
Stadler	1,400	O'Brien	50
Coler	100	Pinkney	200
Stoiber	100	Garber	100
Strauss	1,000	Patterson	500
Uhlman	200	Gray	50
Conlon	100	Theo. W. Meyers, $1,000; after deducting Mr. Cox's $300 check	700
Delehanty	100		
Spaulding	100		
Potter	200	Ryan	10,000
Brady	100		
Dooling	1,000		
Gwathmey	100	Total	$25,750
Neville	200		
Peck	500		

In this amount the Elias contribution of $100, Conlon's contribution of $110, and John B. Gray's contribution of $50 appear to have been accounted for. See statement. The total amount proved by the People being $25,490.

Take Mr. Lynn's check. I am not at liberty to say to you what Mr. Lynn cabled about this when he first saw it in the papers when he was in Europe. $500. The assumption is campaign purposes. Mr. Lynn was here day after day. Those of you who know him saw him here. He was pointed out by Judge Conlon upon the stand. He was never placed upon the stand.

Take Theodore Meyers' check. No evidence what that was for, but I will assume it was for campaign purposes, but there is not a particle of evidence.

So we might go through with a number of others, but the aggregate is between $25,000 and $26,000, including the contribution of $10,000 by Mr. Ryan.

It has been assumed all along that the account in the Farmers' Loan and Trust Company amounting to $22,000, $15,000 of which is charged up by Judge Parker toward campaign contributions. The $12,000 in Sarecky's account in the Mutual Alliance Trust Company, making either $27,000 or $34,000, just as you assume whether that bank account is $22,000 or $15,000. We will take the larger sum, $22,000, in the Farmers' Loan and Trust Company, $12,000 in Sarecky's account, $34,000; $16,000 paid to Fuller & Harris, $50,000; $12,000 in Boyer & Griswold for stocks, $62,000; $11,000 in round numbers in Fuller & Gray, making $73,000.

All money derived from these campaign contributors.

Now, what is the fact? This fact is undisputed, mark you, nothing to contradict it at all. During this same period Lehman gave him $5,000 just before he was nominated for Governor, an absolute gift; he tells you it was not for campaign purposes, but because he was an admirer of the Governor-to-be. He knew he was needy, and he gave it to him out of good will and to help his necessities.

Then there is Reilly, $26,500. Undisputed, no suspicion cast upon it at all, not even an attempt upon cross-examination to shake the reliability of his testimony. This money was given

to him from time to time during the months of October, the latter part of September, and in October, 1912, $31,000.

Then the contribution loan of Meany, $10,000. Now, why was it that this slur was attempted to be cast upon Meany, their own witness, undisputed, no doubt cast upon it that it was a loan to him. And he said that he had previously loaned moneys to him, and that those loans had been repaid.

So we have $41,000, the $10,000 given by Meany in $1,000 bills, and one of these payments you will recall to the stock brokers was of $10,000 in $1,000 bills. Can you say — if you can you can do better than I can— as to which money went to the buying of these stocks? To my mind it does not make any particular difference.

Of course there are some checks that went into the Boyer & Griswold account, the first stocks that he purchased. Some of the checks that were given, some of them for campaign purposes, undoubtedly; others as personal gifts; one a check of the Governor's own to the amount of $900; $7,125, I think in cash.

You have all these funds mixed; you cannot separate the campaign contributions from the loans and gifts. What went to purchase stocks, and what went to campaign expenses, no one can tell, not even the Governor himself, I will venture to say.

But it is not necessary to separate them. Now, what use was made of this money? I am not going to argue before you that this money, to a considerable amount, was not used for the purchase of stocks. There is no crime in that, unless he stole this money. Legally, he had a right to use it to buy stocks, not ethically, not in good taste, but as a matter of law. That proposition has been argued to you to some extent before, as to the legal phase of it, and I will not repeat it now as it appears in one of our briefs as published in the record here.

What use was made of those contributions? That brings me to the testimony of Mr. Ryan. A little bit of Mr. Ryan's evidence throws a flood of light upon this case, explains many things. We have not sought to bring the wife of the respondent in this case. It has been our effort to keep her out. It was first brought in, so far as the evidence appears, on the order that was given to Josephthal, signed by the defendant, for Mrs. Sulzer. Why?

Because he had explained — she had, in the first instance, in her trouble over this loan that was pressing her. When they were in camp at Gettysburgh, I believe the first week in July, that her husband had a large loan upon stocks that belonged to her, and he stopped her talking; he would not talk business with a woman. He saw the Governor, and the Governor told him of this loan upon stocks that belonged to his wife. So when he came to give the order for the stocks, after the story that he had told to Josephthal there was nothing else for him to do but to sign it as the agent for his wife.

Now, they have brought in testimony, the man having charge of the books of the defunct Carnegie Trust Company, to testify that the name of Mrs. Sulzer does not appear there as a borrower. No pretense was made that her name appeared there as a borrower; no claim that her name appeared there as a borrower; no claim that her name appeared with Harris & Fuller as a borrower; but the name of William Sulzer, borrowing money upon her stocks. And you will recall the checks from Harris & Fuller, that they gave to Sulzer from time to time, moneys upon the stocks that they held, all addressed to the Carnegie Trust Company to take up the loan that was there. I am not going to dwell upon this a great deal.

I said that there was a little of Mr. Ryan's testimony that throws a flood of light upon this case, and some things that may seem to be mysterious to you about it. In speaking of the interview that he had with Governor Sulzer, he said: "I suggested to Mr. Sulzer that, now that certain charges have been made against him that I did not see how he could afford to put himself in the position that he would put himself in if he did not answer those charges." It was brought out by the other side, not by us, that in reply Mr. Sulzer said that his reason was that he did not want to drag his wife into the situation, and put her upon the stand. This illuminates the whole situation.

Imagine yourself in his place. There are some things that a decent, manly man, cannot do to save himself. Some things that a man of even low ethical standards cannot shield himself by. Some sacrifices of others that he cannot allow to be made, even at the risk of losing high position and being forever disqualified for

political preferment and honors. Which would you do? Run the risk of losing the empty honor of being Governor — empty if held with dishonor — or lose the respect of every decent and honorable man in the whole United States by saving yourself at the expense of the honor and integrity of the one you are bound to love and protect. Imagine yourself, I say, in that position, with his experience, the political surroundings that he had been brought up in, the political ideals that he possessed, the political education that he had received in a school where it is supposed that political influence can reach not only into the courts, but even into the sanctuary of the church. Is it any wonder that, in desperation, he resorted to the methods best known to people brought up in such a political school; with such a political education, and endeavor to secure the influence of political leaders of both parties to have the impeachment articles brought by the Assembly declared to be illegal for lack of jurisdiction? as he had been informed and advised by high legal authority they were.

Is it any wonder that he preferred to risk his high position and all future political advances rather than subject himself to the scorn of every honorable man, and should resort to these methods, which you and I, and all right thinking men, consider dishonorable and regard as an imputation upon our courts of justice, that it should even be thought for a moment they could be reached by political or other influence?

One thing, though, further, which Mr. Ryan's testimony develops, one further thought it brings to my mind, and that is the evil of our political system of leadership in this country.

When great parties in a great State, and largely subject to the control of a single man that has dominating influence, can be brought to bear if he so wills it to either control the actions of men in legislative bodies, and even in courts, or else ruin their whole political future; and I congratulate the Republican members of this Court whose influence it was thus indirectly sought to obtain that the information that came back was that that great organization would not interfere one way or the other, that the accredited leader of that organization would not permit any man high or low to even speak to him about the case; in other words, that the members of this Court were not, the judges of the Court

of Appeals were not to be interfered with in any way, shape or manner, but permitted to do exactly in accordance with the views that their consciences compelled. Still, the information that came back, we do not know from whom, was not exactly correct. You recollect first that it was that none but the elected judges of the Court of Appeals would sit, would be members of the Court; second, that it would be held that the Assembly could come together at any time, any place, anywhere, at the call of any one private citizen, or anybody else, but so long as a majority of them kept together they could prefer articles of impeachment; the position that was contended for by the Managers; perhaps these two first replies came from the Managers, but this one that I refer to turned out also to be incorrect, because you have held that they cannot be convened at any man's whim, upon any man's call, but being in session regularly called that then they have the right to act.

I wish that Mr. Ryan had also made inquiry of the leaders of the other parties. It would have been extremely interesting to know what the response to that inquiry would be. I trust that it would have been equally frank. If any inquiry has been made I hope the same statement comes back to those Senators not of the Republican faith, that they are not to be interfered with, that no instructions are to be given to them, that the accredited leader of that party will not permit anyone, high or low, to speak to him in regard to this case, but leave those who are his followers to obey the dictates of their own consciences untrammeled by even a suggestion or request which may involve their political future if that suggestion or request is not obediently complied with.

But to return. Article 6 charges stealing, that he stole this money. Now, you heard the argument of Judge Parker in that respect. If it were not for my great respect for him and for the fact that he has been the presiding judge of our great Court of Appeals, I would characterize the whole argument on the subject of stealing these moneys ridiculous.

If the respondent had been the treasurer of a political organization having the custody of funds for somebody else; if he had been the treasurer even of a little campaign committee to conduct the respondent's personal campaign, and he had kept the

money; if he had been the treasurer of the State Committee, receiving money to carry on the campaign of a great party, not only for the benefit of the candidates, but to see that certain principles were formulated into laws, and he had taken the money for his own use, I would say it was stealing. But here was money that was given to this man for his own particular use and benefit, to be used as he saw fit. To say that he was the bailee for somebody else is an absurdity. A man cannot be a bailee for himself. To say that he procured this money by false pretenses — he is not charged with that; but if he were, you heard the labored attempt to show that there was some false pretence about Sulzer in acquiring this money; that even his appearance, to use the language of Judge Conlon, would be a false pretence to defraud. What false pretenses did he make and what did he do with the money? He paid it to Harris & Fuller, this amount that is claimed he had stolen, $15,000. To the other brokers he gave $23,000, making in all thirty-nine thousand and some odd dollars. He received in loans $41,000.

Which did he appropriate, the contributions or the loans? What evidence have you that it was not this money he received in loans instead of the other that was paid to him for campaign purposes?

Now, we come to the statement that he made out — and this statement seems to be the crux of the whole situation, provided you hold, as has never been held before, that a man can be impeached for acts that he committed before he entered upon office. Now, Judge Parker has argued to you that because this statement was made out by the Secretary of State, in pursuance of a law that stated he could furnish, or should furnish forms, that therefore, this statement became a part of the law itself, and that a person could be indicted upon it for falsely swearing to that statement thus made out because it was a part of the statute law of the State. That I understand to be the gist of his argument in that respect. It was the same as though this statement had been written into the statute. I will not take much time to discuss that before you. But to the members of the Court who desire to take it, I refer you to but a single case. I am not much of a man to remember the title of cases, but it is 128 U. S. at page 14, where

you will find that the Supreme Court of the United States held that a man must be indicted under the statute and not under á regulation formulated by an officer of a department pursuant to the statute.

Judge Parker.— What is the page?

Mr. Herrick.— 128 U. S. page 14. I am about to commence another subject.

The President.— Well, yes, we will suspend now.

The Crier.— Hear ye, hear ye, this Court will now take a recess until 2 o'clock this afternoon.

Thereupon, at 12:25 o'clock P. M., a recess was taken until 2 P. M.

AFTERNOON SESSION.

The Crier.— Judges of the Court of Impeachment.

The President.— Call the roll.

The Clerk thereupon called the roll, and found a quorum present, with the following absentees:

Senator Fitzgerald.
Judge Gray.

The Crier.— Hear ye, hear ye, this Court now resumes its session from recess.

Senator Emerson.— Mr. President.

The President.— Senator Emerson.

Senator Emerson.— May I be permitted to ask, if we adjourn, would it be in order to make a motion at this time that when we adjourn, that we adjourn until Tuesday?

The President.— May be you better have that determined now, — or wait until the occasion comes. What is the pleasure? Of course, it is immaterial to me.

Senator Brown.— Mr. President, under our established order of business, we will adjourn until Monday at 2 o'clock, if no motion is made.

The President.— Yes.

Mr. Herrick.— But we will adjourn at half past three.

The President.— I would like the sentiment of the Court on the matter. Suppose, if we should adjourn to-day, according to the rule, at half past three, now, in case the argument is not completed at that time, what is the pleasure of the Senate? Shall we then adjourn until 2 o'clock Monday, or when?

Senator Brown.— Mr. President, I have no doubt that there will be a unanimous desire that the argument be completed, and a motion to that effect can be made at that time if necessary, and I suggest that formal action be not taken now, for the reason that Senator Wagner is not present.

The President.— Does that satisfy Senator Emerson?

Senator Emerson.— I would feel that as we are here, I would like to make a motion that when we do adjourn, we adjourn until Tuesday, at 10 o'clock Tuesday.

Senator Brown.— I move the Court sit to-day until the completion of the argument of counsel.

Senator Cullen.— I second the motion.

Senator Thompson.— Mr. President.

The President.— Senator Thompson.

Senator Thompson.— If we are going to adjourn over Sunday, and we are going to adjourn anyway, either at half past three or four, or half past four, then I think it is fair to take into consideration the convenience of those of us who live a great ways from here, and a great many of us cannot get any train to go home to-night except the train that leaves the city at 4 o'clock.

It would seem to me that, in fairness to us, if an adjournment is taken to-day, over until Monday, it should be taken, under the rule, at half past three, and I hope the motion will not prevail.

Senator Argetsinger.— Those are my sentiments exactly. That if the counsel are unable to complete their arguments by 3:30 o'clock under our rule of procedure, the hour of adjournment, I think that we should go over under the rule until Monday afternoon.

The President.— Then you support Senator Emerson's position?

Senator Argetsinger.— I object to it going over until Tuesday.

Senator Emerson.— I do not care when we adjourn to, but unfortunately some of us people have a little work to do. I am not a gentleman of leisure. It seems to me that at this time before counsel resume we should settle when we will adjourn to. It is absolutely immaterial to me when we adjourn —

Senator Blauvelt.— Mr. Chairman, I think that this matter should be postponed until Senator Wagner is in his chair. He is one that should be considered at this time, and I agree with Senator Brown that no action should be taken until Senator Wagner is here.

Senator Brown.— I withdraw my motion if there will be no other motion until he comes.

Senator Blauvelt.— I would suggest, Mr. President, that we defer action upon this motion until the conclusion of Judge Herrick's argument and then take it up.

Senator Emerson.— That is very satisfactory to me. I withdraw my motion.

The President.— Now, proceed, Judge Herrick.

Mr. Herrick.— Mr. President and Gentlemen of the Court. I presume that upon the matter that you have been discussing briefly that perhaps counsel have nothing to say, but still it seems to me that this should be considered the same as ordinary, or if you please extraordinary cases, and there should not be a delay of two or three days to answer the arguments that we have made; that the answers to our argument should be made as ours have been to the other side promptly and quickly after they have been

delivered and not after deliberation of days, which gives a certain advantage to the people upon the other side, and I don't think that I am arrogating to myself any undue authority or presumption when I say that I believe that that would meet with the approval of the counsel upon the other side, that this session should be held until the arguments are entirely completed.

Now, at the close of my discussion before adjournment, or about the close, I had referred you to a case in the United States Supreme Court, and I am told I referred to 128 U. S. It should be 228, page 14. It is upon the proposition that an indictment cannot be founded upon a regulation of the department, although the department may be authorized to make regulations. That that would be legislation which neither Congress nor any legislative body can confer upon any administrative official or department.

I have also 144 U. S. 677, 678; 165 U. S. 553; 106 U. S. 466, on the same proposition.

Now, to resume the question of the statement and the law in relation to the statements to be filed, it is in the very singular condition as was demonstrated to you by Mr. Marshall upon his argument, and I will very briefly refer to it in perhaps a little different aspect from that in which he presented it. Section 776 of the Penal Code requires a candidate within ten days after election to file a statement of contributions made by him or moneys expended by him. A failure to do so is made a misdemeanor. Conviction thereof would not forfeit the office, and making it is not a condition of taking office. As originally enacted it provided that the failure to make it was the forfeiture of the office to which he had been elected. But in deference to two decisions of the Supreme Court, both of them written by one of the counsel in the case, that statute was subsequently amended by striking out the clause rendering the failure to file a statement a forfeiture of office.

Under section 546 of the Election Law, commonly called the Corrupt Practices Act, assuming that it does require him to make a statement of contributions — which I regard as more than doubtful — is not required to be under oath. The statement is required to be made within twenty days. You will recall, the

statement in the Penal Code is "to be within ten days." So it apparently provides, the law provides for two separate and distinct statements. Section 550 recognizes the fact that a candidate may make a mistake, and upon its discovery by any one, an application may be made to the Supreme Court requiring him to make a further statement; and upon his failure to do so, or upon his making a false statement, he then may be punished as for contempt of court.

Section 541 of the Penal Code — I will not read the entire —

Mr. Marshall.— — of the Corrupt Practices Act.

Mr. Herrick.— —of the Corrupt Practices Act, the Election Law, rather — requires him to file a statement of expenses, except the personal expenses provided for in —

Mr. Marshall.— I think it is section 542.

Mr. Herrick.— Section 542. Those are excepted from any statements he can make. Now, section 542 provides for various personal expenses of a candidate, including his traveling expenses, publication of literature, circulation of literature that is not circulated at regular intervals, and various other personal expenses for which he need not make any statement of expenses, recognizing the fact that there are some things that a candidate need not account for.

Section 542 provides for these expenses, and then it winds up with this:

> "A candidate shall in any event file a statement of any contributions made by him."

So, as Mr. Marshall suggested to you, there runs all through the provision the idea that he shall make a statement of contributions made by him. Nowhere, nowhere is there any requirement that he shall make a statement of contributions made to him.

This utterly excludes the idea that he is compelled to make a statement of contributions that are given to him. So that, under the provisions of the Penal Code, he could not be indicted for making a false statement because he did not include contributions

made by him, and could not be indicted for perjury because he included in it matter that was surplusage.

Of course we don't contend, and never have contended that an impeachment would not lie, excepting for an offense that was indictable. I am not arguing for that proposition, but here he is charged in the article with perjury. With perjury! Now, if in making this statement he made a statement that he was not required to make by law, that no law compelled him to make, if he included in it matter that was not material to the statute, not material to the statement he was required to make, in other words surplusage, then as to that, as has been demonstrated to you before, no indictment for perjury could be predicated thereon, and he was not guilty of perjury in a legal sense.

Under section 546 of the Corrupt Practices Act he could not be indicted for making a false statement, because there is no provision made, as I have stated before, for a further and correct statement, and the punishment for making a false statement, when he is required by the Supreme Court to make such, and that is the exclusive remedy provided, and when, as has been suggested to you before, a new crime, a new offense is created, and the punishment is provided therefor, that is exclusive of all others.

How the statement was made up. You have heard from Sarecky how that was made up. Sarecky, for ability, was a very remarkable witness. I wondered how my distinguished friend, Mr. Stanchfield, would have come out if he had been subjected to the same cross-examination that Sarecky was. I wondered what would have been the result. If he would have demonstrated the same fearlessness in answering every question put to him, no matter how it reflected on his personal conduct, and the frank way in which he stated those things which I know in the judgment of some gentlemen of this court reflected on him.

To illustrate: The very frank way in which he admitted that he signed the name of Sulzer to this letter to the bank, authorizing him to sign the name of Sulzer, and headed it "En route." Now, that, at first blush, would seem to have been a discreditable act on his part, but was it? This man it appears has been for years acting as Governor Sulzer's confidential man. When he

was in New York, representing him there; when he was in Washington, still taking charge of the New York end of the business, signing his letters, endorsing his checks, drawing his money for him. Almost the only man of ability that Sulzer had around him. The only one in whom he could confide, as subsequent events have shown. The only man worthy of his trust and confidence; the only man almost of all his beneficiaries who has been loyal and true to him. Not loyal and true to the extent of committing perjury, because it was not necessary. I do not say that he would not have done it if it was necessary, but we have nothing here to show that it was.

Judge Parker denounced Sarecky as worthless. I am sorry for the Judge. I regret the misstatements he has made in this case as to what the evidence is, and I will call your attention to it in a moment. I regretted that he is driven to such extremes. I regret that a former Chief Justice of the Court of Appeals is driven to misrepresent and misquote the testimony in this case. But, to return, where is there a particle of evidence to show that this man was a worthless man? Look at his history: A Russian Jew: I know there is a prejudice amongst some people against Jews, and Russian Jews; but let me tell you that we have no better and no more loyal class of people growing up in this country than those people who come from Russia, and are Russian Jews.

Read the book of Mary Anton, the story of the Russian Jews, and it will bring some of you gentlemen who have prejudices against that race to your feet; see the struggles they go through, the privations they endure for the purpose of getting an education in the language and institutions of this country; look at the thrift that they exhibit, the industry, the honesty and the integrity in every place where they are employed. Nothing against this man excepting that he was the employee of Sulzer, loyal and faithful to him and coming over here at the age of two years, a Russian Jew from Odessa. See what his history has been. I will venture to say not a man in this courtroom has a greater command of the English language than that young man, and he is the master of two or three other languages, all acquired in the short space of time that he has been in this country, between the age of two years and

the age of twenty-seven. And yet with this history behind him, the exhibition of loyalty and the truth, unshaken in every instance, to be denounced as worthless and unworthy of belief, when the only thing to contradict him is the testimony of this bank official who sees hundreds and thousands of people coming in and out of his bank, and who is the only one to contradict him. And notice the fearless way in which he was paraded before Sarecky, and the fearless way in which Sarecky, looking at him calmly and quietly and deliberately said no, he was not the man who asked him to send in the letter of authorization. You think if he had been telling a willing and a conscious lie when confronted with this man, knowing the bank president would come forward and dispute him, that if he was corrupt, if he was dishonest, that he would have, with his quickness of wit, his ability, his shrewd judgment, not have said no, because it was of no consequence whether the bank president or one of the employees of the bank told him what he ought to do, and he knew enough to know that he in the consciousness of his own rectitude and of his own belief in the truth of what he was saying when confronted by him, deny he was the man that told him.

But let us go a little further, because some times there are things that do not appear in the sworn evidence in the case that are just as important as those that do. You recall that they asked the signatures of this man, and on our examination at their request, possibly the first day's cross-examination, I am not clear, he wrote out four signatures, two in ink, two in lead pencil. The next day he was called upon to make more signatures, wrote out the name of William Sulzer in full instead of "Wm." Sulzer. Then he made in the presence of us all here these different signatures. You gentlemen saw those men to whom those signatures were passed, who examined them critically. What were they? Experts in handwriting; after a critical examination of the names upon the checks that were confessedly signed by William Sulzer, you saw them produced there right before you, and the signatures made by Sarecky here, those gentlemen departed from the courtroom and have not been seen here since.

Another thing: He told you the manner in which the business was carried on in this office; the method of making up this

statement; the manner in which it was done. He told you that Horgan was there; that he was there during the campaign from time to time; that he assisted him in making up this campaign statement and he pointed out to you Horgan, who had been sitting here day after day, the Secretary of the Frawley Committee, who knows all about this case, who knows whether Sarecky was telling the truth or not; why was he not placed upon the stand?

If this man is not telling the truth, why was not Horgan produced to contradict his testimony? If he was not telling the truth about his ability to sign William Sulzer's name — and he was permitted to do it year in and year out — why were not these experts in handwriting produced?

Because, I say, after the exhibition here at the counsel table we have a right to assume that those gentlemen were handwriting experts brought up for the very purpose of determining whether this man was a liar or not when he testified of his ability to sign William Sulzer's name.

Another thing, and I shall go over this hastily: You remember his testimony, the manner in which he took in this statement. Well, this testimony first; we will speak of that, Wolf's testimony. That he went in there and he read over — did you notice what he was led to say, that he read over this affidavit, whether it was a correct statement of contributions received by him and receipts, whatever it reads in that affidavit, and asked him if he swore to that. Something that practically he conceded he had never done before. He says he never had taken an oath to a statement of campaign expenses. That ordinarily he went in and asked a man, "Do you swear to that?" And you New York lawyers, and other lawyers for that matter, know that the Commissioners of Deeds do not read over the affidavit. They ask if he swore if that statement which is made and subscribed by him, so help you God, is true. You knew that he was lying.

Sarecky tells a story about that, as to what was done. He went in there and asked him if it was true and if he swore to that, and Sulzer said he did.

Now, Sarecky says that he took that statement into him, two sheets, mind you, opened up so that the typewritten statements did not appear. He says that the Governor never read it; that

the Governor never looked over it. He asked him if it was true, or if it was right. I don't pretend to give you the exact words, gentlemen.

Mr. Hinman.— He said is it all right?

Mr. Herrick.— Is it all right. And Sarecky answered to him, replied to him, "It is as accurate as I could make it." Now, that is the testimony.

And yet, and yet, my learned friend who preceded me told you, without a particle of evidence to warrant him in stating it directly in opposition as to what was sworn to, that Sulzer read over without learning the contributions and thought how clever this man, young man, was not to bring into the list the contributions of brewers, liquor dealers and the men connected with the interests.

I am sorry, sorry for the learned judge, who either does not know about the testimony in this case, or who resorts to such unworthy misquoting of what actually took place, or was sworn to upon the trial in this case. It is natural in writing out this statement, as it was; it is not an improbable story.

All of you, gentlemen, have been candidates for office. Not one here but who has been elected. Some of you undoubtedly have been exceedingly careful of the manner in which your statements have been made out. Others of you have relied upon a statement of your campaign manager as to what you had expended. You relied upon them to make up your statement, or, if they did not make up the statement, you have relied upon them to give you the material from which to make up your statement.

A number of you gentlemen here, who are sitting upon the Court, have known William Sulzer for years. You have been his backers and supporters. You know the characteristics of the man. You know his careless methods and business habits. You know whether the story that Sarecky tells as to the manner in which that statement was made out, and the perfunctory manner in which this man signed it, is probable or not. You know it better than I do, because you know the man better than I do. You assisted in placing him where he is, and where he has been

in the years gone by. You know whether it is a probable or an improbable statement.

I shall spend no further time upon this, because whether a truthful — I make no question about whether it is correct or not, but the thing is as to whether he wilfully and corruptly knowingly made a false statement. That is the thing for you to determine. And what have you got? What evidence have you got of corruption? What evidence have you for that he wilfully and knowingly made this statement, knowing it to be false. Not a particle! The only evidence — and you must decide upon the evidence — that you have got before you as to the manner in which this statement was made up, is the evidence of Sarecky — Sarecky, who could have been contradicted if he was not telling the truth by the witness here, under the control of the Managers, here present in Court, and you are bound as honest men, passing upon the evidence and nothing else, nothing upon your suspicion, nothing upon your doubt, nothing because you have got an impression that this man is a bad man and unfit for office, and that therefore everybody connected with him is a crook and a scoundrel, without any evidence to support those suppositions,— you have got to take the statement as to the manner in which this statement was made out, as absolutely correct in truth.

I promised to finish within twenty or twenty-five minutes.

In reaching your verdict and determination as to whether the respondent has wilfully done wrong, you must take into consideration the nature and the history of the man and the nature of the offenses. As I just said, some members of this Court have known him for years; know his lack of business habits and business methods; of his carelessness in money matters; of his overweening ambition; know of his egotism; know of his proneness to consider those things which are the creatures of his imagination, as actual facts; but none of you, none of you in the past have ever regarded him as a dishonest man, a perjurer or a thief — and that is what these charges come down to.

He has been in public life now for nearly twenty-five years; five years, as I recall it, in the Legislature of this State, one year serving as Speaker, eighteen years in Congress; rising step by step, until by long service and presumed ability, becoming chairman of one of the most important committees in the House.

At the time he was in the Legislature, from common report — and these are things of which men situated as you are, can take public notice and judicial notice, money was flowing freely in the legislative halls for those who wanted it, but never the breath of suspicion was cast upon him in those days. In the days of the huckleberry grab and other bills of like character, when he was in the Legislature, no one accused him of being a party to any corrupt legislation or receiving a penny for his influence, or for his vote.

Now, after over a quarter of a century of public service he is, for the first time, charged with being a dishonest man, charged with stealing money, charged with plundering his friends, charged with seeking contributions for one purpose, using them for another, and committing perjury to conceal the fact.

These things, it is said, bring shame and disgrace upon the State. They do! They do! The fact that a great party nominated and the people of the State of New York elected a man to be Governor of this great State, of the ethical standards of this respondent, must be conceded to be a shame and disgrace to the State of New York, but it is not for those things that you are to remove him from office.

Another thing that is a shame and disgrace to the State of New York. These things were unknown to the State of New York until the Impeachment Managers, for some purpose, God only knows what, brought them to light and brought shame and disgrace upon the State of New York.

I recollect — I am not very familiar in these days with the Scriptures, but I recollect there is some passage in the Scriptures where the mantle is cast over the naked body of a person to shield him from shame and disgrace.

When these things became known, those people who had the good name and fame of the State of New York should have withheld them for the honor and dignity of the State, instead of bringing them forth for the purpose of removing from their path the man who seems to have been an obstacle in doing things that were a great deal worse than anything that is charged up to the Governor.

Gentlemen of the Managers, these Impeachment Proceedings are a mistake, a great mistake from any point of view; and I believe that no one now realizes that more than those who were instrumental in bringing them.

No object in removing him from office because of those things. The term is short. The people can eject him in a short time. The Legislature is adverse to him. He can do no harm excepting to investigate, excepting to expose wrongdoing, excepting to stop graft and corruption; but he can do no harm to any honest, well-meaning people in the State of New York because here is the Legislature in both branches hostile to him. Why then bring these impeachment proceedings excepting to halt these investigations which Mr. Hennessy says were under way —

The President.— I do not think the evidence goes —

Mr. Herrick.— I said "under way." I am going no further because you stop us there.

The President.—Very good.

Mr. Herrick.— I had in mind the ruling of the Court. The bringing of these impeachment proceedings are lamentable because of the object lesson of what may occur to any man in public life who dares stand and oppose the wishes of those who may know something about his private life and history not known to the general public.

Now, in conclusion, in rendering your verdict, let it be such a one as will demonstrate to the people of the State that regardless of any personal feeling toward the accused, or any preconceived opinions, or any political or personal differences with him, they may be convinced that the respondent has had a fair and impartial trial; such a verdict as will sustain the proud reputation of the highest courts of this State for learning, impartiality and freedom from political or partisan bias; a verdict and decision that will serve as a precedent in years to come, and be a mark of honor to everyone who has participated in its rendition.

Sir, you are approaching the end of your public career.

During the time you have received great honors from the State, honors well merited and amply repaid by distinguished services

from boyhood until nearly three score years and ten upon the battlefield, in the councils of a great party, and in the highest tribunals of justice in this State. God forbid that in the closing days of an illustrious career you aid in any way in placing an indelible stain upon the splendid history of the State you have loved and nobly served.

The President.— About how long, Senator Brackett, do you expect to take? Because the question when we will adjourn will come up. It is not with a desire of limiting you, but merely of getting an idea.

Mr. Brackett.— I should think about two hours.

The President.— Then you could not finish unless we sit beyond the hour.

Now, gentlemen, bring up the question of what we shall do.

Senator Thompson.— Mr. President.

The President.— Senator Thompson.

Senator Thompson.— Mr. President, I move it is the sense of this Court that we suspend at half past three, under the rule.

The President.— Is the motion seconded?

Senator Wagner.— Mr. President.

The President.— Senator Wagner.

Senator Wagner.— I haven't the ideas of the counsel on both sides as to whether they would be agreeable for adjournment or not. My impression is that we ought to have the summing up completed to-day.

Mr. Marshall.— That was our idea.

Senator Wagner.— And then be ready to proceed with the final determination on Monday. If, however, it is the sentiment of the Judges and Senators otherwise, I have no interest in the matter. I am willing to stay here or go.

Senator Thomas.— Mr. President, I desire to bring before the Court one matter of convenience, affecting members of the Court

who reside in central and western New York. It is impossible for us to reach the Court room before 2:30. If, therefore, at this time adjournment could be taken to 2:30 on Monday, instead of 2 o'clock, it would enable us to be present at the calling of the roll and to take part in the exercises at the beginning of the session.

Senator Wagner.— I am sensible of the fact that the majority of the Court will probably poll for an adjournment and vote it according to their desires, but if counsel are to finish their arguments to-day, personally I am willing to stay here and go into executive session and until our deliberations shall have been finished. I am opposed to any adjournment on account of any other reason than the rule of the Court.

Senator Thompson.— Mr. President.

The President.— Senator Thompson.

Senator Thompson.— I concur exactly with what Senator Argetsinger has said. I am perfectly willing to sit here, if it is thought best to take this case up and decide it now, and to have an evening session and sit all night, if necessary. But if it is not supposed to be important enough to go to that inconvenience then I say the question of inconvenience of us people who live a good way from here should be considered, and we should adjourn at half past three.

Judge Werner.— Mr. President.

The President.— Judge Werner.

Judge Werner.— It seems to me that this should be considered from both points of view. There are many reasons why it would be desirable to finish this case without adjournment. While there are more points of contrast and comparison between this Court as it is composed and the ordinary jury, there are unfortunately some considerations which render it undesirable that the Court should separate and return to the several constituencies represented by it during the deliberations and after the evidence has all been put upon the record. But it is quite evident that we cannot finish to-night unless we have an evening session. And there the

grave question arises whether we do not subject ourselves to the criticism of precipitating and railroading a case of this magnitude and importance to a conclusion, instead of giving it that calm and careful consideration which it deserves and demands.

Now, I quite agree that there seems to be no other middle course between the two suggestions that have been made. We must either remain here and finish this case, no matter how long it may be, or we ought to adjourn at the usual hour until Monday, and then take up the case in the ordinary manner.

For one, I rather incline to the latter view. I think we should adjourn at the regular hour, and convene on Monday at whatever hour may be suggested, and then sit continuously until the case is finished.

Senator Brown.— Mr. President.

The President.— Senator Brown.

Senator Brown.— I would like to know the views of counsel. In what experience I have had at the Bar, counsel have usually objected to spreading the final argument, and it was with that in mind that I proposed that we go on to-day to the close of the final argument.

I would like to say one other thing. Without in any way magnifying the office which I happen to hold, the members of this Court are now performing a judicial function as high or higher than they have ever performed before. In a matter of such general interest to the whole State, that personal convenience is less than negligible in the consideration of the course that we should pursue. Whether I am comfortable over Sunday or not makes no difference. We must conduct this cause in the light of the previous experience in the conduct of litigation, in the best and most deliberate manner possible. And it was my idea that that most deliberate manner called for the completion of the final argument to-day, and the period of rest over Sunday for further and private consideration and study of the great issues pending before this Court. And I hope that the Court will adopt that course from the highest considerations with which personal convenience has nothing to do.

The President.— The motion of Senator Brown, as I understand it, is that we remain in session until the arguments of counsel are completed, and then adjourn until Monday at what time?

Senator Brown.— The usual hour.

The President.— Well, some of the members say they want thirty minutes leeway.

Senator Brown.— I have no objection to that.

The President.— I supposed not. Well, we will put it on Senator Brown's motion.

All those in favor of the motion of Senator Brown, which is, that we now remain in session until the conclusion of the arguments of counsel and then adjourn until Monday at half past two o'clock, say aye.

(The members of the Court responded accordingly.)

The President.— Opposed, no.

(The members of the Court responded accordingly.)

The President.— Call the roll.

The Clerk.— Senator Argetsinger.
Senator Argetsinger.—For the reasons already stated I vote no.

The Clerk.— Judge Bartlett.
(No response.)

The Clerk.— Senator Blauvelt.
Senator Blauvelt.— Aye.

The Clerk.— Senator Boylan.
Senator Boylan.— Aye.

The Clerk.— Senator Brown.
Senator Brown.— Aye.

The Clerk.— Senator Bussey.
Senator Bussey.— Aye.

The Clerk.— Senator Carroll.
Senator Carroll.— Aye.

The Clerk.— Senator Carswell.
Senator Carswell.— Aye.

The Clerk.— Judge Chase.
Judge Chase.— Aye.

The Clerk.— Senator Coats.
Senator Coats.— Aye.

The Clerk.— Judge Collin.
Judge Collin.— Aye.

The Clerk.— Judge Cuddeback.
Judge Cuddeback.—Aye.

The Clerk.— Judge Cullen, President.
The President.—Aye.

The Clerk.— Senator Cullen.
Senator Cullen.—Aye.

The Clerk.— Senator Duhamel.
Senator Duhamel.—Aye.

The Clerk.— Senator Emerson.
Senator Emerson.—Aye.

The Clerk.— Senator Foley.
Senator Foley.—Aye.

The Clerk.— Senator Frawley.
Senator Frawley.—Aye.

The Clerk.— Senator Godfrey.
Senator Godfrey.—Aye.

The Clerk.— Judge Gray.
(No response.)

The Clerk.— Senator Griffin.
(No response.)

The Clerk.— Senator Heacock.
Senator Heacock.—Aye.

The Clerk.— Senator Healy.
Senator Healy.—Aye.

The Clerk.— Senator Heffernan.
(No response.)

The Clerk— Senator Herrick.
Senator Herrick.—Aye.

The Clerk.— Senator Hewitt.
Senator Hewitt.—Aye.

The Clerk.— Judge Hiscock.
Judge Hiscock.—Aye.

The Clerk.— Judge Hogan.
Judge Hogan.—Aye.

The Clerk.— Senator McClelland.
Senator McClelland.—Aye.

The Clerk.— Senator McKnight.
Senator McKnight.—Aye.

The Clerk.— Senator Malone.
Senator Malone.—Aye.

The Clerk.— Judge Miller.
Judge Miller.—Aye.

The Clerk.— Senator Murtaugh.
Senator Murtaugh.—Aye.

The Clerk.— Senator O'Keefe.
Senator O'Keefe.—Aye.

The Clerk.— Senator Ormrod.
Senator Ormrod.—Aye.

The Clerk.— Senator Patten.
Senator Patten.—Aye.

The Clerk.— Senator Peckham.
Senator Peckham.—Aye.

The Clerk.— Senator Pollock.
Senator Pollock.— Aye.

The Clerk.— Senator Ramsperger.
Senator Ramsperger.— Aye.

The Clerk.— Senator Sage.
Senator Sage.— Aye.

The Clerk.— Senator Sanner.
Senator Sanner.— Aye.

The Clerk.— Senator Seeley.
Senator Seeley.— Aye.

The Clerk.— Senator Simpson.
Senator Simpson.—Aye.

The Clerk.— Senator Stivers.
Senator Stivers.—Aye.

The Clerk.— Senator Sullivan.
Senator Sullivan.— Aye.

The Clerk.— Senator Thomas.
Senator Thomas.— Aye.

The Clerk.— Senator Thompson.
Senator Thompson.— No.

The Clerk.— Senator Torborg.
Senator Torborg.— Aye.

The Clerk.— Senator Velte.
Senator Velte.— Aye.

The Clerk.— Senator Wagner.
Senator Wagner.—Aye.

The Clerk.— Senator Walters.
Senator Walters.—Aye.

The Clerk.— Senator Wende.
(No response.)

The Clerk.— Judge Werner.
Judge Werner.— No.

The Clerk.— Senator Wheeler.
Senator Wheeler.—Aye.

The Clerk.— Senator White.
Senator White.—Aye.

The Clerk.— Senator Whitney.
Senator Whitney.—Aye.

The Clerk.— Senator Wilson.
Senator Wilson.— No.

The Clerk.—Ayes, 49; Noes, 4.

The President.— Senator Brackett.

Senator Brackett.— With the permission of the court: I think myself happy, members of the court, that it is given to me to speak to you at this time. The time, the place, the cause, conspire to high thought and mighty endeavor. "The blood more stirs to rouse the lion than to start the hare." The pulse runs higher, the heart beats stronger, in defense of the honor of the commonwealth, here fearfully assailed from within, than in a cause less sacred. He to whom is given the opportunity to aid in shielding the mother who bore him, the father who begot, or the State which has nurtured him, is thrice happy and blessed among men.

No one, even slightly acquainted with the history of this greatest of the states, and of the names that make that history a glorious one, can avoid a prideful satisfaction that, in the performance of duty, it is given to him to plead in behalf of her good name. It is with that pride and that satisfaction, that the Managers of this impeachment come before you in this final stage of this historic trial, to press upon you that you cast from her service one who has forgotten her honor and been faithless to the trust she reposed in him.

In doing this, I beg you to believe that there is nothing akin to professional exaltation in having been able to develop the facts requiring the conviction of the defendant, but, rather, only a feeling of performing a solemn duty to the people of the State.

At the time of the commencement of this proceeding a few weeks ago, it was something over forty-one years since the Assembly of the State, the representatives of all the people, more truly than any other officer or body known to the law, in the performance of a solemn duty, exercised the functions laid upon it by the Constitution and the laws, in the impeachment of a high official of the State. In our freedom from high crime in public

place, we had almost forgotten the machinery for its decrees. In a revision of our organic law made during that period, the provisions for the impeachment of a public official were regarded as so little likely to require use, that they received scant attention at the hands of the learned men reviewing them, and left open for high discussion here questions that could have been speedily and definitely settled there.

Through the mists of the years that last State trial rises before us with singular distinctness. In the course of our proceedings here it has been looked to with profoundest respect for precedent and for argument. And as I have studied its record, I have prayed that it would be given to us here, each in his own place, members of the court, counsel, the officials who have served us, to take high courage from the examples there set us, and to meet our duty here as they met theirs there.

And yet I do not remind you of this high occasion, nor of the examplars who have gone before, to render you timid in the performance of your work. The intelligence that has been given to us is for use in the doing of great as well as of small duties. We must take the final steps in this proceeding in precisely the same spirit that we do our daily round of petty duties through the years. Unawed by responsibility, unafraid of the consequences of any result, unafraid of any result itself, except a wrong one, with appreciation of the great opportunity to do a lasting service for the right, laying aside any baser motives, let us here highly resolve to proceed, as it is given to us to see the light, and with manly hearts.

Not speaking now to the members of the Court accustomed daily to render judgment, to whom the ascertainment of right is a study and justice a habit, but only to those others unacquainted with judicial work, let me, as one familiar with every temptation that can come to you in the performance of such duty, address myself to you a moment.

From the beginning of the impeachment proceedings brought against William Sulzer, nay, from the time that his crimes were first whispered around these halls, on behalf of the defendant there has been a persistent and studied attempt to terrorize the members of this court and every person associated with the prosecution. Every means known to the demagogue has been attempted to ac-

complish it — the press, a few of its members venal, many of them thoughtless of the grave situation presented, have daily paraded much hopelessly bad law and have direfully threatened those who were so singular as to say that they doubted the wisdom of allowing a criminal to remain in the executive chair. Political extinction has been threatened to those bold enough to urge that it might be well to have an orderly investigation of the matters charged against this man. Counsel have been warned that their appearance for the people here would result in savage attacks upon them. We have witnessed the indecency — for I think it can be called nothing less — of public meetings called to overawe your judgment and to give you instructions how to decide this cause, before a single word of sworn testimony had been given to you. In season and out, it has been preached that justice would not be done here, when justice was the last thing desired by the preachers. No such campaign has ever been devised as the one that has thus attempted to influence and to terrify you from the performance of your duty.

Against all this I hold up to you the simple oath you took at the beginning of this trial. Its solemn words are fresh with you, and I know that in their presence the least thoughtful will be sobered to the fullest sense of his duty, as I know too that this wave of clamor will never rise in its influence to the level of the soles of your feet.

I recall to your minds the words of one of the Senators upon the trial of the President, when, standing the heroic figure that he was, in very travail of soul, he wrote:

> " To the suggestion that popular opinion demands the conviction of the President on these charges, I reply that he is not on trial before the people, but before the Senate. In the words of Lord Eldon, upon the trial of the Queen, ' I take no notice of what is passing out of doors because I am supposed, constitutionally, not to be acquainted with it. * * * It is the duty of those on whom a judicial task is imposed to meet reproach and not court popularity.' The people have not heard the evidence as we have heard it. The responsibility is not on them but upon us. They have not

taken an oath to 'do impartial justice according to the Constitution and the laws.' I have taken that oath. I cannot render judgment upon their convictions, nor can they transfer to themselves my punishment, if I violate my own. And I should consider myself undeserving the confidence of that just and intelligent people who imposed upon me this great responsibility, and unworthy a place among honorable men, if for any fear of public reprobation, and for the sake of securing popular favor, I should disregard the convictions of my judgment and my conscience. The consequences which may follow either from conviction or acquittal are not for me with my convictions to consider. The future is in the hands of Him who made and governs the Universe, and the fear that He will not govern it wisely and well would not excuse me for a violation of His law."

Still another distinguished Senator, in announcing his judgment in the same case, said this:

> "My duties are clearly judicial, and I have no concern with, or responsibility for, the consequences, political or other, that may flow from my decision."

Brethren of the Senate, men many of whom I know of my own knowledge, and all of whom I believe to be of high mind and lofty ideals, men with men of whom through the years it has been my privilege to clasp hands in love and friendship, unless and until, you shall reach the spirit of these great men who thus spoke, you do not come up to the mark of your high calling, but, having reached it, you are worthy to sit in judgment in this air of judicial calm that may not be found outside.

Whatever may be thought elsewhere, here you will place your bark on the highest promontory of the beach and wait for the rising of the tide to make it float: "And that every one of you will come up to this level in your deliberation and your judgment, I have never for a moment entertained a doubt,"

> "So nigh is grandeur to our dust,
> So near is God to man,
> When duty whispers low, 'thou must',
> The youth replies, 'I can.'"

So to all those who have professed doubts as to whether justice would here dominate, who have sought to discredit in advance the patient fairness by which every right of the defendant has been here conserved throughout the days, to all "Right Reverends" and "Wrong Reverends," everywhere, profess to find here not the solemn performance of a public duty laid on you by the law, but only an opportunity to scourge and strike the political enemy, I send greetings and invite them to learn from the great apostle of moderation of speech and ask them to come and see how, under the strictest forms of law, divesting themselves of every unworthy motive or thought the representatives of a free people come together and give judgment.

The charges against the defendant William Sulzer here are eight in number. I shall not consider much some of them, three, I. which charges the defendant with having made a false statement;

II. with having made a false statement and having attached thereto a false affidavit; and

VI. With having made collections of campaign contributions which he failed to report in the statement and which he converted to his own use, whereby he was guilty of larceny

may be considered together.

The III. charges the defendant with having kept certain witnesses from before the Frawley Committee; the IV. with having kept certain witnesses named and all other persons from before the Frawley Committee so that they could not and would not give testimony; the V. with bribery, if I recall; the VI. is the larceny; the VIII. is the matter of the stock speculations.

What answer has the defendant made to these charges? And the answer which he brought here, signed with his own name, and filed with this Court to stand on the records to the end of recorded time, is typical of the man and typical of his effort, and every act that has been proven in the case.

He came into this court, having exhausted every dilatory motion and every point of law which the ingenuity of the most learned counsel in the State could discover to raise here. Having exhausted all that in an effort to secure the dismissal of these charges without being called upon to meet the great, crucial fact

as to whether or not he was guilty, and without being called upon to put any evidence in. Having thus exhausted all means of delay, he comes here and he files an answer signed with his own name, he files a false answer signed with his own name. And what is that answer, in the light of the testimony that is here, unanswered in the slightest degree, uncontradicted to the extent of a syllable, what answer is that? He comes here and admitting the mere formal facts that he was a candidate for Governor and is now Governor, and that he did file a statement, every one of which, of course, was susceptible of proof here within ten minutes from the time the court convened, he thereupon solemnly, in the face of all the people of the State, filed with this great court an answer which is itself an infamous lie, when he says that he denies each and every one of the facts set up in Article I. And if you will consider from now to the end of the chapter that it is typical of this defendant, that wherever he thinks the proof cannot be found, he submits a denial, you will find the key to the answer of many a question that will be put to you in the consideration and final decision of this case.

What is the proof? And when I come here on the question of proof, I confess to you that I am embarrassed beyond measure. Ordinarily it is given to counsel, where there has been evidence submitted on the trial of the case to argue that this evidence is true and that not, to argue that this witness has sworn truthfully and that one not. And to balance the probabilities in the case, to see where reason and experience point the line of truth between the two statements.

But here, what was there? If I commenced to argue before this Court as to the truth of the evidence submitted on behalf of these Managers, I would be justly called by the presiding officer, who might say, Why do you argue to something as to which there is no possible contradiction? And so it is like arguing with the east wind, or it is similar to wrestling with the ague. You cannot get ahead with anything that can be said, because the simple statement of a proposition demonstrates that the evidence given on our behalf here is true, and that there is not a single word of contradiction with respect to any part of it.

In the statement that was filed by this defendant made out

on the 13th of November, and filed in the Secretary of State's office on the next day, he certified to the Secretary of State and to all the people of the State by whose grace and favor he had received a majority of the votes at the previous election that he had received during his campaign but the sum of $5,460, the donors of which were named and were 68 in number. He certified that the expenses which he had incurred during that campaign were $7,724.09, and thereby he meant to have the people of the State and any one who would come and read to believe that he had been elected by the contributions of 68 small contributors who altogether had given him during his campaign less than $100 apiece as an average. And the thought that was in his little mind as he did that was posing as he had posed during the years, as one who was still in the Congress a poor man, fighting the people's battle, that the great common people were the ones who were his friends and the only ones who had contributed anything to his election. All of the great interests that cluster around Broad and Wall streets, all of the interests that might come here and want legislation; all of those interested in politics, were carefully left off from the statement, and it was only the little men contributing, as I say, less than one hundred dollars apiece that had risen in their might and made William Sulzer the Governor of the State. It was only they who had contributed as he certifies to the Secretary of State.

What is the uncontradicted proof with respect to it? What answer does my friend make here, do either of the learned counsel make who have argued here? What answer is there? The uncontradicted proof stands here, you will find the details of it in the sheets that have been passed around, and which while one of the learned counsel says is incorrect, has not had its incorrectness pointed out in the slightest degree. It stands that every entry made in this sheet is proven and proven beyond cavil and without contradiction by the evidence in the case, and the reference is made in the paper itself to where that evidence will be found.

By that paper it is shown and by the evidence therein referred to it is shown that during the time of his campaign, although

he had reported receipts of but $5,460, there had been paid to him in the way of contributions checks that had been actually traced to him, and upon which there are marks which he could not avoid or escape, $12,700, or more than twice as much unreported as he had reported. It is demonstrated that there was of cash that has been traced to him unreported in this statement which he thus filed, the sum of $24,700, or nearly five times as much as the amount which he admitted in his statement he received. And it has been demonstrated, the shameful fact has been demonstrated, that during the time of the campaign he paid to brokers on Wall Street securities $40,462, much of which was the very checks which were handed to him for the campaign purposes. Ah, but says the defendant, those people were so enraptured with my previous personal history, they were so in love with the situation that made it possible for me to be Governor, that knowing the necessities with which I was afflicted, they made a purse for my personal comfort and to relieve me from the slough of debt in which I had been wallowing for years.

I want to stand for the proposition, first, that he who is nominated a candidate for a public office, who receives contributions during that campaign, if nothing is said on the subject, receives them with the implied understanding and obligation that they are for the purposes of his campaign. There shall be no opportunity for hair splitting on this. The man who so far refines that he can claim to himself or to another, let alone to this high court, that having been nominated for an office by a great party in the State when contributions are made to him, whether by personal friends or by persons interested in the success of the party, who can so far refine that to claim he can out of his own grace, if I use the language of the catechism right, out of his own grace and favor only think he can say "This check is mine; this large check is mine; that little one is for the purposes of a personal campaign; this one I will not report; that one I must and will" — the man who makes any such claim as that stands in a position for the first time of making it, for no other human being from the time we have had popular elections until the present moment has ever had the hardihood to come and make any such claim.

What is the exact situation in which a candidate for place who receives contributions stands? He is not nominated for his own glory, however this defendant may have thought that was so, it was not for the glorification of William Sulzer that he was nominated as the candidate of the Democratic party on that morning of the 3rd of October, 1912, at Syracuse. He was nominated as a representative of a party; he was nominated to be supported by the party, and when the contributions from that moment came in, any man who had any conception whatever, not simply of ethics but of decency, knew and recognized, and must have known and recognized to the full, were contributions because the contributor desired the candidate of the party should be elected for which he had been nominated and because the contributor had an interest in the success of that party.

But it is said "These were personal." "These were personal," and one or two had been marked "For his personal campaign," and that differentiates between two elements of the person.

Things personal in that it is to be for his personal campaign particularly, that the contribution is made by some friend for the purpose of enabling some particular machinery to be put in motion, some particular committee to be appointed, some particular thing to be done for this particular candidate as distinguished from all the others that are taken care of by friends in the same way, their friends. That is where the contribution is made for the personal campaign. And if it is thus regarded as made by friends, or shown to have been made by friends, if it is said that it was for the personal campaign, or if nothing is said with respect to it, and it is handed to the candidate, then there is every presumption, not only presumption, the fact demonstrates in such case that the contribution is made to the individual for his personal campaign. And when he calmly, ignoring that fact, says that it is for his personal use, he ignores an essential basic fact which cannot be ignored, and he makes conversion of the money. And, when added to that, when added to that he indulges in the ridiculous proposition that the contributions that are made to him for his personal campaign are put to the bucking of the stock market, he has drawn a picture of himself which needs very little else to paint in full and complete.

But what is there about this element of personal contributions? It is not necessary to support these charges that it should be shown that every contribution that was given to him was a personal campaign, or for a campaign and not personal to his own use, that is, his private use; if we show a reasonable amount, if we have shown that there are enough of such contributions, in number and in amount, that they could not have been overlooked by any possible doubt, that no honest man could have failed when he came to put his name to the affidavit or his name to the certificate, could have failed to remember, then we have shown that he has been guilty of not reporting contributions that he should have reported, and we have shown that he has been guilty of conversion.

If we show a half dozen or ten contributions thus made, of substantial amount, and which he failed to report, it is not of any consequence in the settlement of the question of his guilt or innocence that there may have been one or two as to which there was a doubt, if it was not actually a personal contribution to buy him a hat and suit of clothes.

What contributions are shown here now, as to which there is no possible doubt?

In this list I leave out where there is any doubt whatever. I do not mean to include any, except those as to which no honest man can read the testimony and believe that they were anything else than personal campaign contributions.

There was the check of Mr. Pinckney for $200.

There was the check of Mr. Gwathmey for $100 which he says in so many words, in a letter, was for his personal campaign.

There is the check of Mr. Coler for $100.

There is the check of Morris Tekulsky.

The check of Peter Doelger.

The check of Abraham I. Elkus, which he says in so many words in his letter, with which it was enclosed, the purposes for which it was to be used.

The check of Mr. Uhlman for $300.

The check of Mr. Spaulding for $100.

And the cash from Thomas F. Ryan of $10,000.

Not one of these items which I have thus detailed to you can

by any possible torturing of the evidence be made to warrant the use of the funds for private purposes. Every one of them. Take the contribution of Mr. Ryan. What does Secretary McGlone say? He said that the candidate asked for money, $7,500 or as much more as they would give him; that he was about to go upon campaigning in Westchester county and needed the money for that purpose. McGlone carried to him the ten one thousand dollar bills and gave it to him, as he said, for his personal campaign. Do you think — and Mr. Presiding Judge, I hesitate to ask the question as an insult to your intelligence. What do you think, can any rational man think for a single minute that when on the 13th day of November, 1912, William Sulzer affixed his signature to the statement that he had received during the campaign $5,460, that there was not running in his mind at the very instant that he did it, "And I have got $10,000 of Thomas F. Ryan's money in my pocket this minute as clear gain"?

What about the $2,500 of Mr. Schiff's? Now, I am not at all going to pass over, nor slur, nor fail to meet the very merry contention of counsel on behalf of this defendant that Mr. Schiff's contribution was personal to him and that he had a right to use it for anything he pleased. Why, the internal evidence, aside from any oral evidence, demonstrates the utter falsity of that claim. Mr. Schiff himself said that it went for his personal campaign, and as evidence of precisely what was Mr. Schiff's intention, you have endorsed on the check, in his own handwriting, made at a time when the matter was under investigation and when he was telling the counsel for the Committee the purpose for which it was given, in which he stated that it was for campaign purposes. Do you think that Jacob H. Schiff, the head of one of the great houses in New York, did not know in the month of July, 1913, when he made that endorsement on the face of this check, what he had made his contributions to William Sulzer for?

But further, let us see this claim that Mr. Schiff was so touched with William's infirmities that he was going to help him out to the extent of $2,500. What would be the cause here for a man, an honorable man like Jacob H. Schiff, if he was going to give William Sulzer a present of $2,500 for his personal uses? Wouldn't he give him a check when Mr. Sulzer came in and asked him how

much he was going to help him for during his campaign, Mr. Schiff having congratulated him. Do you think that Schiff, if he was going to give him $2,500 for his personal use, would not say, "I won't give anything to your campaign; I give you $2,500 for your own purposes."

But if he did not want, if Sulzer did not want the $2,500 check floating around so that it would be seen that he had relations with Mr. Schiff, but I can imagine that the representative of the great common people, whose apostle he had so long been in Congress, perhaps might feel a little delicacy on the subject of having Mr. Schiff's check for $2,500 with his endorsement.

But if this was for his use then Mr. Schiff would hand him $2,500 in bills. Did he do that? This man having come in and said, "How much will you let me have?" Schiff having said, $2,500, and he said "Can't you do more?" If Mr. Schiff had intended to give a personal contribution for his own benefit, if he meant to make a present to him for his own personal benefit, wouldn't he have handed him the bills?

What was done? "Mr. Schiff, make this payable to Louis A. Sarecky." Who is Sarecky? Sarecky is the man who had been the person who opened the account in the bank of the Mutual Alliance Trust Company, for what? Personal gifts to William Sulzer? Sulzer had his account where his personal matters went in the Farmers Loan and Trust Company. What did Sarecky have this account there for? It was for the purpose of putting into it what? The contributions that were made for the campaign to William Sulzer. And thereupon, Mr. Schiff, having carefully written down the name, the check is made to Louis A. Sarecky, and taken over to Sarecky. And what did Sarecky do with it? Did you have any doubt on the subject? It never was a personal contribution to William Sulzer. Then what on earth possibly had it doing in the Sarecky account, where there was only, aside from Sarecky's little personal matters, where there was only campaign contributions from which the statement was finally made up?

Let us get away from the sham and the pretence that the Schiff check was anything else than a contribution made for campaign purposes. Do you think when he came to make his false certifi-

cate and to certify to the Secretary of State and to all the world that he, the apostle of the plain people, had been elected with contributions of only $5,460, that he did not know alongside, of the fact of Mr. Ryan's $10,000 check, in his brain, that there was the $2,500 check of Jacob H. Schiff, as to which he was fully the gainer. So the certificate was false. And so the affidavit that was made to it was false.

I am not now discussing the question of perjury. I am not going over the law as my associate skilled on the criminal side of the law gave it to you here earlier in the trial. We stand here on every line and every word of the brief which he thus filed here, and I shall not go over it here again.

The certificate was false. The affidavit which he made there was false; whether or not he can escape on the claim that because it was not required by the statute that he should swear to it at all, as to whether he can escape the penitentiary or the State's prison on that plea is not here at all. When he put his name to the affidavit and swore to it before Abraham J. Wolf, he swore to a lie, and he knew he was swearing to a lie; and whether or not he was guilty of legal perjury that would justly land him in the State's prison he was guilty of the moral perjury, he was guilty of all the blackness of intention of all the guilty heart that he would or could have been had he sworn as required by the statute and he believed he was.

But the first of January comes, and from that moment he is a converted man; but, my brothers, there are some of us here to whom through the years the question of conversion has been very much before our eyes, and yet I cannot fail to remind you that the great church which stands to-day, as it has stood from the beginning, firm in the belief of a conversion from sin, that it yet demands repentance. Never yet, when you were standing behind the sacred desk, never yet have you permitted to join Holy Church, a man whom you did not believe in your heart had repented of his sins. Oh, but on the first of January, like Saul of Tarsus on his way to Damascus, there came a light, yet before that moment he was in gall of bitterness and bondage of sin, although prior to that time he had done nothing but serve the forces of evil, yet from the first day of

January when the light came to him he became a consecrated man and devoted himself thenceforth to the service of God and humanity in the People's House.

Oh Saul! Oh Saul! Persecutor of the Saints, but the greatest of the Apostles! What foolishness has been attempted through the years because of that sudden conversion of yours on the way to Damascus. There is many a man that tries to liken himself to Paul when the only likeness is to that of Saul. Saul saw a light, but he respected it. He repented of his sins. Saul, having seen the light, announced that from that moment he renounced the Devil and all his works.

He did not go around trying to suborn perjury. When he got together the few Christians in the upper chamber, wherever he could get them, to preach the Word, after his conversion, he did not whisper to one of them that if he was sworn he hopes they would be easy on him. Before he opened the meeting with prayer, he didn't call one of them aside and see if he could send word to tamper with the court that was going to try him, and he finally won a glorious martyrdom by sincerity, and not by posing. By honest work, not by many professions; by doing the work and not by being a rank hypocrite.

Can you imagine Paul telephoning to Gamaliel that he was "the same old Saul. And can't you make it more than $7,500?" These are facts. The certificate was false. The affidavit was made with all the blackness of heart that could cause a man to be guilty of rank perjury anywhere.

And then he took every dollar that was thus contributed to him, of which I have given you a list, and went to play in Wall street, and bought Big Four stock. Oh, well, our friends say, that is all true; that is all true, and it may not have been quite ethical; it was not quite ethical. Perhaps it was unmoral, a little unmoral, but still he has been elected by the people. Is the Election Law a joke? Is the statute, for the passage of which, and the perfection of which, high-minded men and women during the years have come here year after year for the purpose of getting it into some kind of shape where, if the use of money in elections could not be prevented, it could at least be exposed? A law which never yet has taken any step backward. Where every step that has

been taken at all has been in the direction of making it tighter, of making it more perfect, so that no one should be able to slip through its meshes. Is this law still discovered to be a joke? That it is only a question of the lighter ethics as to whether it shall be obeyed or not?

I read you from Exhibit No. 130 for identification:

> "In my opinion, this publicity campaign contribution bill is one of the most important matters before the House. It is a bill for honest elections to more effectually safeguard the elective franchise, and it affects the entire people of this country. It concerns the honor of the country. The honest people of the land want it passed. All parties should favor it. Recent investigations conclusively demonstrate how important to all the people of the country is the speedy enactment of this bill.
>
> "I have been for years a consistent advocate of this legislation. I have done all in my power to get a favorable report from the committee, and I shall do all I can to enact the bill into law. Many people believe that if a law were on the statute books similar to the provisions of this bill the Republicans would not have been successful in the election of 1896. The Republicans succeeded that year because they raised the largest corruption fund in all our history.
>
> "I would like $7,500, or as much more as you can make it." "Pigmies are pigmies still, though perched on mountain peaks, while pyramids are pyramids in vales."

My friends have waxed earnest, to say nothing of the eloquence. They have waxed earnest in the proposition that, in all the years there has been every effort made to make this law so that it would require to be done just what was intended by it, that the wisdom of the Legislature and the executives who have concurred in the passage of this law has been so at fault that to-day it means nothing. If you hold this man guiltless of crime in this connection, at least, members of the Senate, have the decency to introduce a bill to repeal it, and have it done quickly and thoroughly.

It is said by my most learned friend, and it is a labor of love to him I know, that while this does stand in the Election Law, yet

there is no penalty that makes it a crime, and, therefore, when this defendant signed this false statement and filed it and swore to it that he was not guilty of a crime.

In the 560th section of the Election Law, you will find the provision which succeeds the various steps of procedure prescribed by the statute, how there can be an investigation, and after the procedure is thus prescribed down to judgment follows this language:

> "If such person or persons," and that comprehends a candidate, "or committee or committees, have failed to file a statement or have filed a false or incomplete statement, and such failure to file or such false or incomplete statement was due to a wilful intent to defeat the provisions of this article," and is there any doubt on that—I omit some intervening verbiage not material—"the person or persons, or committee or committees proceeded against shall be liable to a fine not exceeding $1,000 or imprisonment for not more than one year or both."

In a previous section which I have not marked, it is continually spoken of, a violation of the section, the violation of law and the punishment thereof. So that the section does provide a punishment for the person who either fails to file a statement or files a false statement, and if it provides the punishment as it does of imprisonment or fine, then it is a crime because under the Code definition that is a crime which is punished either by fine or imprisonment. It is not of the slightest consequence in the reading of that section to the punishment of the offender whether there was any preliminary proceeding before the judge or not. It is not the proceeding before the Supreme Court Justice that makes the crime. The crime exists when he filed the false statement.

So it stands. It stands unanswered. It stands unanswered either in law or in fact here that this man had received contributions to the amount stated; that he had filed a false statement with respect to them; that he had attached a false oath to it; that he had committed larceny of the funds, and it stands that in so doing he committed a crime that is punishable by fine or imprisonment.

I pass now to the fourth article, and I as I remember while I have not heard all of the arguments of the defendant here, it is an

article as to which our friends in their argument sang a very low song. I purpose to read with your permission, and perhaps to your tiring, a few lines from that article. It charges the defendant William Sulzer, then the Governor, and the formal parts are familiar to you, and while the Frawley Committee was investigating: "While such committee was conducting such investigation and had full authority in the premises, he, the said William Sulzer, practiced deceit and fraud and used threats and menaces with intent to prevent said committee and the people of the State from procuring the attendance and testimony of certain witnesses, to wit: Louis A. Sarecky, Frederick L. Colwell, Melville B. Fuller, and all other persons, and with intent to prevent said persons named, and all other persons severally, they or many of them having," and so forth, from giving testimony before that Committee.

The article then is broad enough to allow testimony of such attempt as constitutes an infraction of the section, and the testimony which I note hereafter came in under this article without objection, because it was known to be relevant and competent, any objection that the article was insufficient to receive the testimony. Now, the law on the subject and making it a crime, is this, and it is contained in section 814 of the Penal Law:

> "A person who maliciously practices any deceit or fraud, or uses any threat, menace or violence, with intent to prevent any party to an action or proceeding from obtaining or producing therein any book or paper or other thing which might be evidence, or from procuring the attendance or testimony of any witness thereon, or with intent to prevent any person having in his possession any book, paper or other thing which might be evidence in such suit or proceeding, or to prevent any person being cognizant of any fact material thereto from producing or disclosing the same, is guilty of a misdemeanor."

Let me now read the words of the section, reading it by leaving out words that do not bear directly on the contention here made:

> "Any person who maliciously practices any deceit or fraud with intent to prevent any party to an action or proceeding from procuring the attendance or testimony of any witness therein is guilty of a misdemeanor."

There can be no question that the doings of the Frawley Committee constituted a proceeding. It was not an action at law, it was not an action at law to recover from William Sulzer $30,000 which he had converted. It was a proceeding that would result in the wish on William's part that he had repaid it. It was an investigation to discover crime, whether actual or potential, precisely as a coroner proceeds for the same purpose. It was a proceeding. The Committee representing the Legislature was a party to the proceeding, as were the people of the State.

It will be noted in limine that under the section, no consummation is required to constitute the crime. All that is required is malicious deceit or fraud, with intent to prevent the attendance or testimony of any witness. The malicious feature takes care of itself. If the intent is shown the law stamps it as malicious, just as malicious injury to crops is shown when it is shown that the injury was intentional, and all that can be shown in that connection is intention. The word malicious only imports an evil intent, as is prescribed in the Penal Law, section 3, subdivision 3.

Whether the testimony was actually prevented is not of the slightest consequence. When the deceit is maliciously practiced with the intent to prevent, the crime is complete.

We come now to the proof. Mr. Morgenthau had contributed $1,000 to the defendant on the 5th day of October, 1912. It was given to help the defendant in his election, in his canvass. If any of you have any question as to the exact correctness of my words you may look at pages 527 and 556 of the record and you will find Mr. Morgenthau's testimony.

This check was given to help the defendant in his election in his canvass. On the 2d or 3d of September of the present year, 1913, the defendant called up Mr. Morgenthau at Portchester and asked the latter if he would come to Albany at once. Mr. Morgenthau declined, giving his reason, and thereupon the defendant said, "If you are going to testify, I hope you will be easy with me," and then added, as Mr. Morgenthau then testified, "He said something about that I should treat the affair between us as personal," and the witness added in his testimony here on the stand, "I said that I could not."

The damning character of the defendant's request is apparent at a glance. He wanted Mr. Morgenthau not to go before the committee, or if he did go before the committee to perjure himself to save him, the defendant, from the results of his previous crime in not reporting the Morgenthau contribution made to him during the campaign, and thereby he brought himself precisely within the section of the Code and precisely within Article 4.

The Frawley committee was in existence, as it still is, and was holding hearings. The defendant deliberately sought to prevent that committee from securing Mr. Morgenthau's testimony or at least from securing his true testimony and to get the latter, Mr. Morgenthau, to perjure himself in his, the defendant's, interest; but the defendant's learned counsel urged that the transaction was personal, that Mr. Morgenthau's contribution was for personal use; that he asked Mr. Morgenthau to testify only to the truth in the request that he made on him "to be easy on him and to treat it as personal."

Do criminals find it necessary to solicit witnesses to tell the truth? Is it not presumed that they will do so, particularly if they are men of high character, as Mr. Morgenthau is? What was there in the character of Mr. Morgenthau that led the defendant to believe that he would testify to anything other than the truth? And that it was necessary to call him up on the telephone to get him to be sure and tell the truth? Did he think that, unless thus solicited, the witness would swear to a lie? That is unthinkable. And, mark you, as denominating and stamping and sealing the entire transaction, mark what he said at the end of the conversation. What he wanted done was something that Mr. Morgenthau at once recognized as improper, and told him that he could not do it. It was not the truth he was seeking to have Mr. Morgenthau tell on the stand, because, if it had been the truth, Morgenthau would not have said he couldn't do it. It was the fact that he wanted Morgenthau to get down, with black perjury on his lips, and testify to save this criminal here on South Hawk street. And the only reason that Morgenthau said that he could not do it was because he at once, instantly, recognized that it was an untruth and a rank perjury that the defendant was soliciting him to commit.

The testimony of Peck, the Superintendent of Public Works, is still more direct. Did your Honors notice that, in all of the outburst against Peck, on behalf of the learned counsel here yesterday and to-day, they never said a word against Mr. Morgenthau? They carefully looked over the field of witnesses that were convicting this defendant here, to see which ones they should attack as untrue. They did not dare to come here and argue in the face of a single member of this court, that Morgenthau had told an untruth here on the stand. Morgenthau, a man of the highest ideals, a man of large affairs in the city of New York, a man who has just received a certificate of probity and of the highest character in the appointment as Ambassador to the Empire of Turkey, they did not dare to say that he had committed perjury. But, ah! Peck, Peck, but we must attack Peck. Many of you have known Peck longer than I have. I hold no certificate here for the purpose of defending him or his character, further than as it is shown by the testimony that he gave in this chair.

But I know that this man was appointed to high and most responsible office of this State by a previous Governor. And I know that he was continued in the office by the present Governor from the first day of January down, when any moment he could have been removed simply upon ipse dixit of the Governor. I know that he stands and the presumption is that he stands in Syracuse beyond reproach in public or in private life. And on behalf of the learned counsel I want to say that the attack on Peck was wholly unjustified here. It was made on grounds outside of the record entirely. It was made on an assumption of which there was not a word of proof here; the assumption that there had something been found wrong in Peck's department, and it only shows the malice that is in the heart of this defendant, that would tear down any man, no matter whom, if he thinks that he might thereby better his own condition or save himself from his just condemnation.

This witness Peck had contributed $500 to the defendant for his campaign. He received a letter from the Frawley Committee, asking him to state what contributions he had made, and somewhere after July 19, 1913, he saw the defendant in the Executive Chamber. He showed the letter he thus received from the Fraw-

ley Committee to the defendant, and he asked the defendant what he, the witness, could do about it. And the defendant made what reply? It was not as these gentlemen of the press reported it — that is, they did not report it all. The report ran that he said to him, "Forget it." He said, "Do as I do, as I am going to do, deny it." And Peck, having left some regard for his oath, said, "I suppose I will be on oath." And then the defendant says, "That is nothing; forget it."

On this 19th day of July or soon thereafter this defendant, the Governor of the State of New York, sitting in the chair that has been occupied by men of the highest character, and praise God that from the beginning none of them have ever been suspected before of personal dishonesty, the chair that within the time of my own official life and recollection was occupied by Levi P. Morton, a man who would no more do a dishonorable act than he would put his right arm in the fire and let it wither; it was the chair in which next sat the brilliant Frank S. Black, than whom no more knightly soul ever sat or came to the city of Albany or came to that high office. From the beginning it has been rendered sacred by great names of great men, men who would have scorned a dishonorable thing as they would have shunned a wound. And it was left to this year of grace one thousand nine hundred and thirteen, this year of wrath, it was left to have in the Executive Chamber a Governor who could so far forget not only decency and official honor but who so forgot pride of honor, so far forgot the limitations not only of the criminal but the moral law as to ask this great officer of the State under him to go on the stand and commit rank perjury to save his miserable soul from the punishment that it deserved. Did Peck tell the truth? Why, there is the easiest way in the world to raise an issue; the easiest way in the world if Peck did not tell the truth, some witness can come here and testify that he did not. In all the attack on Peck the learned counsel forgot to have the testimony contradicted. Why, I recall one time in the trial of an action how tremendous energies were bent to the impeachment of a witness who had testified to a fact and the learned counsel who impeached it so devoted their energies to that single fact that they forgot entirely to contradict him. If Peck did not tell the truth here no one knows better than the

learned counsel who sit at the table of this defendant how to meet it and how to beat it, and they know too that it does not come by a vociferous denunciation of the witness who was entirely uncontradicted and if at any time in representing Mr. Peck at all I take the liberty of saying — if at any time Mr. Sulzer, this defendant, sees fit to join issue as to any question of fact with Mr. Peck on the witness stand in any county of the State, Mr. Peck will submit it to the following grand jury to say which one has committed perjury, he or this defendant, and if there was no corroboration whatever there is not a member of this Court here that would have the slightest justification for disbelieving Peck; but when you add to Peck's testimony the fact that he is corroborated in the strongest degree by Morgenthau, whom they do not dare to contradict or claim is untruthful, by Morgenthau to whom he made a similar dishonorable request, you have the testimony of Peck utterly uncontradicted and utterly irrefragible.

There still remains to be considered the testimony of Mr. Ryan on this same point.

It stands here without contradiction of any kind. The defendant asked him to see Senator Root and have the members of this court solicited to vote in his interest, and dismiss the proceedings, failing that to see Mr. Murphy for the same purpose, saying he would do whatever was right, if he could be freed from the impeachment proceedings.

Can the learned presiding officer of this court imagine, with all the experience that he has, what would become of the law if it was to be administered by a direction from one political chief, or another? Did this eminent lawyer — I know he must be eminent, because Exhibit 130 for identification says so, although I must say that the remarks of Senator Hinman during the trial or during the opening somewhat shook my faith as to the eminence — did this eminent lawyer think that that is the way justice is administered in this State, and did he think that there was any member of this court, the youngest and least in experience that would listen, that would so far forget his personal honor, that he would listen for an instant to a suggestion from a political leader as to what should be done in court here after he had lifted up his hand in the presence of his fellow members of the court, and swore to well and truly try this defendant upon the evidence?

Did this man believe, for a single instant, that anything that Ryan, or anyone else would do, would help him in the decision of a legal question?

Failing in having Ryan see Senator Root, then he wanted him to see Mr. Murphy, so as to touch the other political side of the house for the same purpose; and then the cringing, miserable craven that he was, he said he "would do whatever was right if it could be done!" "Whatever was right, if it could be done!"

God in Heaven! Can anyone deliberately stand in this or any court and defend a man who was guilty of that? That is the black evidence convicting this defendant under article IV, as to which my friends have carefully refrained from making any argument whatever. The relevancy of this evidence of Peck and Ryan and Morgenthau, aside from the fact that they were solicited not to go there, which makes it directly relevant — but the relevancy, aside from that, is most clearly set out by Judge Vann, in the case of Nowick against the Metropolitan in 166 New York.

> "Evidence tending to show that a party to an action tried to bribe a witness to give false testimony in his favor, although collateral to the issues, is competent as an admission by acts and conduct that his case is weak and his evidence dishonest. It is somewhat like an attempt by a prisoner to escape before trial, or to prove a false alibi, or by a merchant to make way with his books of account, except that it goes farther than some of these instances, for in addition to reflecting on the case, it reflects upon the evidence upon that side of the controversy. Where it appears that on one side there has been forgery or fraud in some material parts of the evidence, and they are discovered to be the contrivance of a party to the proceeding, it affords a presumption against the whole evidence on that side of the question, and has the effect of gaining a more ready admission to the evidence of the other party. It is not conclusive even when believed by the jury, because a party may think he has a bad case, when in fact, he has a good one, but it tends to discredit his witnesses and to cast doubt upon his position."

So, we have it that upon the testimony of these witnesses, Article IV, which charges acts done by this defendant since he became Governor, which charges him with seeking to prevent the Committee from getting evidence of certain witnesses named, and all other persons that that article stands proven here, stands proven beyond question; and it removes from all kinds of argument and doubt this matter of impeachable offenses, or of offenses committed before the commencement of the term being impeachable.

Here was an act done while he was Governor. It was done at the very time that a legislative committee was seeking light for the purposes of legislation. He deliberately sought to keep these men from going on the stand. And this is the Pharisee, who, pointing to the width of his Phylactory, in proof of his own virtue, demanded that Stilwell resign — that Stilwell, who, if all charges against him were true, and more, could still have sat at the feet of this man and learned crime, even as Saul sat at the feet of Gamaliel and learned all the wisdom of the ancient Jews.

No elaboration is here needed, no argument, no comment. The thing urged by the defendant stands out in all its detestable lines. He urged Morgenthau to commit perjury, he urged Peck to commit perjury. He declared his own intention to do so; and he urged Ryan to tamper with this Court, to the end that he might be acquitted, irrespective of his innocence or his guilt.

The honored President of this High Court has passed something like 33 years on the Bench—almost a half century as lawyer and Judge together. I wish that he might tell us whether in all his career he has ever seen a more plainly proven, bald, naked violation of law than this. A more shameful attempt to prevent a party from procuring the testimony of witnesses. A more wicked violation of the moral law relating to the subject. It proves conclusively the truth of Article 4. It removes any question of an act shown during the official term. It leaves the defendant here stripped naked of any defense at all.

And through and over it all runs the foulest of crimes connected with the administration of justice — subornation of perjury and the declared intention of the defendant himself to commit perjury.

Is there anything further to convict this defendant, required to convict this defendant and remove him from his high place, forever disqualify him from association with law abiding men?

What I have said with respect to Article 4 is true, not so conclusively proven true, but still is proven true and fairly so by a fair preponderance of the evidence—as to Article 3. That article charges the defendant with having sought to prevent Sarecky from going before the Committee and testifying. And Sarecky did not testify. But the defendant says it is not proven that the defendant gave him, directly gave him, any advice not to appear before the Committee. It is not proven? What is the deduction of fact on which we act every day in courts and ask the juries to find? Here was this man Sulzer babbling to every man the hopelessly bad law of my brother Marshall's opinion and advising them not to go before the Committee. He had told Fuller he wanted him to have Marshall for his attorney. He told Ryan that they could not make him appear before the Committee. He told the same thing to Peck. Is it likely that having carried this babbling on from one to another, whoever came to him, advising them not to go before the Committee, is it likely that the boy, who sat at his side and had during many years, that he did not tell him so? If he did, then he is proven guilty under Article 3.

Note the succession of events. On the 21st of July Secretary Platt notified the Civil Service Commission that Sarecky had resigned as of the 18th of July. On the 23d, Hanify wrote Hospital Commission requesting suspension of rules for Sarecky. On the 30th of July, Hanify wrote Hospital Commission requesting exemption of Sarecky, and the Civil Service Commission passed a resolution complying with the request. On July 30th Sarecky first appeared before the Frawley Committee. On July 31st Birdseye wrote Sulzer, giving a copy of the resolution and asking his approval, and on the same day Sulzer approved it. On the 12th of August, Hanify notified the Civil Service Commission of Sarecky's appointment. Sarecky had been the confidential stenographer to Sulzer from the 15th of March to July 18th. From the 15th of May to July 4th, he was out on the road with Hennessy. Then he went back to work in the Executive Chamber, and he remained so occupied until his appointment as lay deputy in the Bureau of Deportation on July 18th.

The first hearing of the Frawley Committee about the time the Committee began its hearings, the latter part of June, he packed up a bundle of papers, some time in July, and brought them from Sulzer's office at 115 Broadway to the Executive Mansion.

Hanify was appointed secretary to the State Hospital Commission on the 10th of July, and shortly before that, and after the Frawley Committee had begun its hearings, Sarecky saw Hanify about the position of lay deputy. He had been asking Sulzer about a better position, and suggested the lay deputy job.

This was in the latter part of May, and he saw Sulzer after he had been subpoenaed before the Frawley Committee, although he could not say whether he told Sulzer of the subpoena until shown his testimony before the Frawley Committee that he had told the Governor.

That is the succession of events.

That is the succession of events and that succession demonstrates this man attempted to keep Sarecky from before the committee, and then Sarecky having failed to testify that he gave him his reward in the shape of a $4,000 place.

It is fortunate for us that in the consideration of the case we are not met by serious questions of fact — that the judgment here rendered may never be attacked or criticised as based on wrong premises.

It surely lightens the labor of both court and counsel, that a detailed analysis of the testimony in this long record, with a view of determining what is true and what is false, is wholly unnecessary. Every fact claimed on behalf of the Managers stands before you undisputed and uncontradicted. There is practically — nay, more, there is not a disputed fact in all the case. The defence has chosen to rest upon legal questions in the case with the single other claim that its chief witness has sworn himself a criminal.

Whatever of construction may come to the learned counsel from the fact that Sarecky has testified that in the defendant's service he committed forgery shall be theirs to the full.

Whatever of satisfaction comes from the fact that such known forgery has stood not only unrebuked by the defendant to the present moment, but rewarded by a place in the public service and a

salary from the public treasury, shall be ours; and it stands as one of the despotic facts in the case, throwing a powerful side light upon the defendant's construction of public duty, that when this boy, after ten years of tutelage in his service, with calculated premeditation, with deliberate intention to deceive in his heart, signed in the defendant's name and uttered to the trust company the letter of authority dated "Enroute," by which he gave to himself the right to dispose of thousands of dollars given to the defendant for a specific purpose, and upon the faith of which the institution to which it was addressed dealt with him as one having authority, that when, to the defendant's knowledge, he had done this he met and has ever since met with nothing but commendation and promotion at the defendant's hands, and is here put forth as the defendant's chief and practically sole witness, worthy of bearing the brunt of the defence by which he hopes to save himself from everlasting disgrace.

What is there in the testimony of this witness Sarecky favorable to the defendant, or unfavorable to the prosecution?

He swears that he made up this statement of expenses filed, but he swears too that the defendant never told him of any of the omitted contributions; of Crossman & Seilken's $2,500, of Morgenthau's $1,000, of Croker's $2,000, of Ryan's $10,000, and a score of others, more than $25,000 in all, not one of these was whispered to the witness by the defendant, who had received them all.

If this be so, and the defendant may not challenge it, then the defendant knew beyond cavil, knew beyond cavil, that the boy to whom he entrusted the making up of this statement, didn't know, and could not know of these thousands of dollars contributed to the defendant's campaign, because aside from the givers, their secret was locked in his own breast alone.

Sarecky testified he made up the statement as well as he could, but, too, that he destroyed every item of evidence in the defendant's office, daily memoranda, checks, check stubs, everything possible tending to corroborate his story. He testified in every way possible to assist this defendant and to take upon his own body the wrongdoing shown here, but he said the defendant signed and swore to the statement of expenses filed with the Secretary of

State without so much as a glance at or a word about its contents, and in so swearing he covered himself with infamy as a garment.

Where are the twelve or fifteen books at Eagle street that would to-day enlighten this Court as to practically, indeed all, but three or four of the contributions that were made to this man? We have shown you something like $12,700 of checks, and $27,000 of cash. Where are the books that would show the balance? If this is the green tree, what would be the dry? Why, members of the Court, do I need to say to you as men of experience that if these managers have been able to wrest from unwilling witnesses who have given the testimony here the evidence to the extent that is named, the evidence of contributions, the evidence of law-breaking to the amount that has been shown here, what would be shown if the defendant would but come on the stand himself, or would send over the books that would show the sums that were received? He made himself rich by the contributions, except as he made himself poor by his antics in Wall street.

Where is Colwell? The learned counsel says that the defendant offered to produce him here if he should be assured he would not be punished under a warrant outstanding for his contempt of Assembly? Is there anyone in this Court that could give that assurance? The Assembly consists of 150 members sitting on the other side of this building. Is there anyone here that would have the effrontery to stand up in Court, and say, "I stand bound that if Colwell comes into the State he shan't be arrested upon a warrant now outstanding for him?" Oh! It is so easy to be brave when there is no danger, it is so easy to be brave, and our friends who are so willing to challenge the good faith of the prosecution in wanting Colwell, because they knew he was outside the State and we could not get him! Colwell, who knows all about the 500 account, telephoning to have his bag packed to meet the northbound train, and said he was going to Albany to see Sulzer; and from that date, so far as this State is concerned, he has vanished off the face of the earth. Do you need to be told that Colwell has been kept out of the jurisdiction of the Court by the advice and connivance of this defendant?

Why was this persistent wish to have cash for contributions

instead of checks except that money has no ear-marks? It stands — recurring again to Sarecky's testimony — that if all that this young man has testified to on the stand be true, he assumes responsibility for failure to account for $5,200. The unreported items that were deposited by him in the Mutual Alliance, the total deposits in there being something over $12,000, and he fails to account for $5,200. And it leaves $32,500 unreported and unaccounted for by anybody connected with the case. I appreciate, members of the Court, that there are many details of the evidence into which I could go and upon which I could comment, in corroboration of our presentation of the case and of the evidence that we have produced here, but time fails.

In the absence of any contradiction, I decline to go further into the testimony, or to make any analysis of it. The testimony stands as true. No one accustomed to weighing testimony, no one familiar with the trial of cases or the sifting of evidence, can doubt for a single minute — it stands that no member of this Court has a single excuse for having any doubt as to the truth that has been put in here by the Managers by this prosecution. And so, leaving any further analysis, leaving the various points that have been discussed by my associate, with a wealth of learning and an earnestness that I can neither have nor hope to have, the further consideration of the case is left to you, as men familiar with affairs, day by day, as men capable of making a correct decision on the case, and it is submitted without any possible doubt as to the result that must be reached.

Oh, Members of the Court, an acquittal to this man upon this evidence would be a wretched gift indeed. Think of the position in which he would be placed by such a verdict. Dead forever among honorable men; cut off already by the unanswered evidence in this record from ever again striking hand in friendship with those who devote their lives to lofty purposes. And yet, an outcast among men, compelled for a brief time to represent the honor and dignity of the Empire State, to meet in official contact those, the latches of whose shoes he is unworthy to loose, by whom hence he is abhorred; charged with the great duty to see that the laws which he himself has flagrantly violated are faithfully executed against others; charged by the Constitution to see that the laws which

he himself has flagrantly violated are faithfully executed against others. Think of the, think of the — if your imagination can carry you to such lengths, solemnly considering an application — think of him solemnly considering an application for a pardon for one who had been convicted of a violation of the Election Law as to corrupt practices. Think of him in all the multifarious situations requiring not only actual freedom from things criminal, but even from any suspicion thereof. Knowing full well, appreciating to the utmost the degradation that must come and the disgrace that must come upon this unhappy man by your verdict of guilty, I still beg you not to think that you will mitigate his punishment by a judgment of acquittal of the charges here proved. It will not be your action that will render him infamous for all the future. That future is already his before you speak. If he takes the wings of the morning and flies to the uttermost parts of the earth, the record of his disgrace is there before him, to meet and greet and abide with him. If he call upon the mountains and the rocks to fall upon and hide him, he will still know no respite from the disgrace that henceforth must walk by his side.

Do not believe that you can lessen his punishment, whatever your decision here. All that you can do is to pronounce, in form of law, in performance of your solemn duty, the judgment that will free the State from the contaminating touch of this man from this time forth.

It is to you alone that the people look for relief. Much has been said on the part of the defendant that he derives his title to his great office by election by the people and that you may not rightly set aside the choice. Let me remind you that the same people who elected him Governor of the State have placed in your hands, not simply the authority but the mandate, if two-thirds of your number find him guilty of crime unfitting him for the exercise of the duties of his office, to remove him. And there rests no heavier duty upon this body than that of convicting upon impeachment any official proven guilty. Forced upon you by no act or wish of your own, the situation requires you to do justice and fear not.

The pen that writes the judgment of this court will be mightier for weal or for woe of this State and for all the people thereof

than any implement of war ever wielded by the arm of man — mightier to us awaiting its record — mightier to all the coming ages. If this last and best attempt at self-government, under which we have rested in security in all the century and a third of our national life, under which the State has been the leader of all the sisterhood that compose the Republic — if this shall fail at the point that we may not remove from high office men confessedly guilty of crime, then, indeed, are we of all men the most miserable. We can transmit our trust as guardians of the present, " as the heir of all the ages in the foremost files of time," to no successor save the coming generation. If that generation come to its inheritance blinded by the example of corrupt officials unpunished and unrebuked, we are near the fall, as we well deserve to be.

You alone can deliver us from the body of this death, oh, wretched men that we are; you alone can deliver us from the body of this death.

And so we leave this case with all its vast interests, the interests of all who love the State and are jealous for its honor and good fame in your hands; leave it with all that it means to the people and the future. Words fail me in the contemplation of all that your decision means. If it ever pleases the Father of us all to guide with his own hand those engaged in the performance of a great public duty, may that guidance be yours this day, and may the decision here rendered bear sure impress that it comes from a wisdom that maketh judgments far above the twilight judgments of this world.

The President.— Before we actually adjourn, I take the liberty of giving you a caution which to the lay mind may be appropriate. If this were a criminal case triable before a court and jury it would be the duty of the court under the provisions of the Code of Criminal Procedure to caution jurors not to discuss the case with any parties nor allow themselves to be approached.

Of course, the case is somewhat different. This is a court of which we are all equally members, but it seems to me that the spirit of the law is equally obligatory on us as it would be in the case of a jury. We should not tolerate, any one of us, the approach by any person concerning the merits of the cause we are about to decide.

We should not allow it to be spoken of in our presence. Keep whatever your minds may be, keep that to yourselves and your associates until we finally meet to determine this case at the hour to which we adjourn. I hope we will comply with this caution. It is necessary to avoid scandal, to give confidence to the administration of justice, and, after a correct decision of the cause, the next necessary thing is that people should believe that it has been decided properly and without the intervention of extraneous influence.

Please adjourn court until 2:30 Monday.

The Crier.— Hear ye, hear ye, hear ye, all persons having any further business before this Court of Impeachment, held in and for the State of New York, may depart hence and appear here next Monday afternoon at two o'clock and thirty minutes, to which time this court now stands adjourned.

Whereupon, at 4:45 P. M., Court adjourned to Monday, October 13, 1913, at 2:30 P. M.

SENATE CHAMBER,

ALBANY, N. Y., *October* 13, 1913.

Pursuant to adjournment the Court convened at 3.02 o'clock P. M.

PRESENT:

Hon. EDGAR M. CULLEN, Presiding Judge,
and
THE JUDGES OF THE COURT OF APPEALS,
and
THE SENATORS OF THE STATE OF NEW YORK.

APPEARANCES:

THE MANAGERS:

Same as heretofore.

Counsel for the Managers:

Same as heretofore.

Counsel for the Respondent:

Same as heretofore.

The President.— Call the roll, Clerk.

The Clerk thereupon called the roll and found that there was a quorum present with the following absentees:

Judge Gray.
Senator Fitzgerald.

The President.— Open Court, Crier.

The Crier.— Hear ye, hear ye, hear ye, all persons having business before this Court of Impeachment held in and for the State of New York, give their attendance and they will be heard.

Judge Miller.— Presiding Judge.

The President.— Judge Miller.

Judge Miller.— An important question will arise preliminary to a consideration of the case on the merits, and that is whether the acts of the respondent as testified to by certain witnesses —

the witnesses Morgenthau and Peck — are sufficiently charged in the articles of impeachment to justify this court in considering them as separate and independent charges, or whether the testimony can be considered only as bearing upon the other acts charged.

Now, while that question was touched upon by counsel, personally I would like to hear further discussion from counsel upon it. I think that is a question upon which there may be difference of view and before we go into executive session I would like to suggest whether we ought not to call upon counsel for further argument upon that question.

Senator Wagner.— Mr. President.

The President.— Senator Wagner.

Senator Wagner.— I move that the Court go into private consultation to consider that question.

The President.— On this question only?

Senator Wagner.— Only upon this question.

Senator Simpson.— I second the motion.

The President.— All those in favor of it say Aye; opposed No. The Court will be cleared.

(The Court having been cleared, the members went into private consultation, and on emerging therefrom the following proceedings were had:)

The President.— The Court desires counsel for the parties to argue further the question whether the acts and conversations testified to by Peck, Morgenthau and Ryan, or either of them can be considered as being acts of misconduct for which the respondent can be convicted under Article IV, or only as corroborative evidence of the other allegations stated in the charges; and whether this Court has the power to amend the articles, if they are insufficient to include those acts, so as to include them.

Gentlemen, the Court considers the question which it has asked you to argue of considerable importance, and therefore, so that your argument may be deliberate and on reflection, it will give

you until to-morrow morning at 10 o'clock, at which time you will appear here, if you desire, either side, to comply with the request of the Court. And especially I wish to impress on the counsel and on all persons who are in attendance in this Court, that notification of this desire on the part of the Court does not indicate any view as to the merits of this case having been taken by the court or any members. It is simply to get your views on this question, on which, with all respect to the great ability and earnestness with which this case was argued, we would like to have further instruction and information.

Adjourn Court.

Mr. Brackett.— Will your Honor direct the stenographer to give us at once a precise copy of the verbiage so that we may know exactly the point which we are to argue.

The President.— The stenographer will write it out and give you each a copy.

Mr. Brackett.— On the question, if the Court please, as to the order of the argument. I presume that on that question we should have the opening and the closing.

Mr. Herrick.— We don't care which way.

The President.— You can settle that among yourselves.

Mr. Herrick.— It is a matter of indifference to us, although that throws the burden of establishing the proposition upon the defendant.

The President.— Oh, no; it puts the burden on them.

Mr. Herrick.— We don't care.

Mr. Brackett.— It is not going to any question of the burden.

The President.— You gentlemen ought to arrange it for yourselves, without calling upon the court.

Adjourn court to 10 o'clock, to-morrow.

Senator Wagner.— Mr. President, last week the Legislature took a recess, an adjournment until 11 o'clock to-morrow, Tues-

day, and would it not be wise to place our adjournment at such time as not to interrupt counsel? We might begin later.

The President.— What would you suggest it be, 12?

Senator Wagner.— Either start at 12 or have an intermission at 11 or 11:30, at which time the Senate will meet.

The President.— Will they take more than an hour?

Senator Wagner.— Not more than ten minutes, I take it.

The President.— Will 11:30 be all right?

Senator Wagner.— Yes.

The President.— It will be 11:30 then, instead of 10.

Mr. Herrick.— Half past eleven to-morrow instead of ten?

The President.— Yes.

The Crier.— Hear ye, hear ye, hear ye, all persons having any further business before this Court of Impeachment held in and for the State of New York, may depart hence and appear here to-morrow morning at 11 o'clock and 30 minutes, to which time this Court now stands adjourned.

Whereupon, at 4:36 P. M., an adjournment was taken to Tuesday, October 14, 1913, at 11:30 A. M.

SENATE CHAMBER,

ALBANY, N. Y., *October* 14, 1913.

Pursuant to adjournment the Court convened at 11:30 o'clock p. m.

PRESENT:

Hon. EDGAR M. CULLEN, Presiding Judge,
and
THE JUDGES OF THE COURT OF APPEALS,
and
THE SENATORS OF THE STATE OF NEW YORK.

APPEARANCES:

THE MANAGERS:

Same as heretofore.

Counsel for the Managers:

Same as heretofore.

Counsel for the Respondent:

Same as heretofore.

The President.— Call the roll, Clerk.

The Clerk thereupon called the roll and found that there was a quorum present with the following absentees:

Senator Fitzgerald.

Judge Gray.

The President.— Open Court, Crier.

The Crier.— Hear ye, hear ye, hear ye, all persons having business before this Court of Impeachment held in and for the State of New York, give their attendance and they will be heard.

Senator Brown.— Before the Court enters upon its regular order of business, I would like to take occasion to correct a misstatement made in a morning paper about what transpired in the private session of the Court yesterday, and also call attention

to it for the purpose of asking that the attendants of the Court take more pains either in keeping the reporters further away or letting them come near enough so that they can have an accurate idea of what takes place.

I find in the Knickerbocker Press this morning this statement: "It was learned that nearly all of the Court of Appeals Judges, including Chief Judge Cullen, spoke during the session. Senator Elon R. Brown, Republican Leader of the Senate, whose motion to permit the introduction of the Ryan testimony by the Senate over the opinion of Chief Judge Cullen and a majority of the Court of Appeals Judges, was known to have talked for nearly half an hour. He spoke from the open space on the Senate floor near the Governor's counsel table, and never has he made such an impassioned address. He was seen shaking his hands in the air, pounding his fists together and shaking his head forcibly during the talk."

I care nothing about it, Mr. President, except as such reports tend to, as far as I form a part of the Court, to cast some reflection upon the Court and the judicial manner in which it performs its duty, and I thought it well to deny it, not only in part but in all. It is false from beginning to end.

The President.— All the Presiding Judge can say is this, the Senator is entirely right. The statement is entirely wrong. It is right to correct it; but I should go a little further. While the press are entitled to publish full and accurate accounts of the proceedings if they can find out what they are, if they publish what are not accurate accounts, and when they try to publish secret proceedings they always run the risk of falling into error; and if they publish untrue accounts they are liable to be punished as for a contempt of court.

Mr. Stanchfield.— If the Presiding Judge please, and members of the Court: As we understand the present status of this case, it is that the Court desires from counsel a statement of the position of the Board of Managers with reference to the question as to whether the evidence and testimony of the witnesses Peck and Ryan and Morgenthau are admissible as affirmative substantive offenses under Article IV of the impeachment; or whether the

testimony of those same witnesses is to be treated as material and relevant evidence upon a collateral issue under all of the charges; and, lastly, as to whether or no this Court possesses the power of amendment of these charges.

I realize, at the outset, the fact that many of the men who compose this high tribunal are laymen, and therefore, unversed in legal phraseology; and, at the risk of being criticized for prolixity, I purpose, in so far as I may, to make so clear to every member of this Court just the position taken by the Board of Managers upon this trial that there will be no man who is courteous enough to lend me a listening ear who will be able to say he did not understand the argument that was presented.

At the outset, we take the position that this trial is not a criminal trial. I use that expression advisedly. I am not unaware of the fact that cases have been cited here by counsel upon the other side, the general holding of which is that impeachment is a criminal trial. But I purpose here, at this moment, to illustrate, if I am able,— perhaps I might use a stronger word,— to demonstrate, if I may, that this particular trial is not a criminal trial. It has some of the characteristics, if you will, some of the aspects of a criminal trial. It likewise has some of the peculiarities that go with civil trials. It is a proceeding, a trial if you will, that stands in a class by itself. It is neither exclusively criminal upon the one side nor exclusively civil upon the other. It is not criminal for the reason, among other things, that, under section 13 of article VI of the Constitution occurs this language:

> "Judgment in cases of impeachment, shall not extend further than the removal from office or removal from office and disqualification to hold and enjoy any office of honor, trust or profit under this State, but the party impeached shall be liable to indictment and punishment according to law.

Therefore, we start with the expressed constitutional declaration that notwithstanding impeachment the party impeached is liable to criminal prosecution according to law.

I now call your attention to a provision in paragraph six of article one of the Constitution which embodies in clear, crisp, co-

gent English one of the principles that has come down to us almost from the dawn of civilization. That provision reads as follows:

> "No person shall be subject to be twice put in jeopardy for the same offense, nor shall he be compelled in any criminal case to be a witness against himself."

In other words, if the framers of the Constitution had ever contemplated that impeachment was a criminal trial, they would never have provided that notwithstanding impeachment, a man could still be called before a jury upon an indictment and required to answer. The constitutional phraseology is so clear that it needs no elucidation and no argument to drive that proposition home to every man who listens to me to-day.

There is the further distinction: This is not a criminal trial, because, forsooth, when the defendant was called upon to answer in this tribunal, he was given the right in his answer to set forth any defense and every defense that to his counsel might seem wise and proper. There is the further provision that the effect of a judgment of conviction is simply to oust the incumbent from the office that he holds. I don't purpose to go further along the line of demarcation between what constitutes a criminal and what a civil trial than I have already stated. It is of great consequence that this proposition as the base of my argument should be thoroughly understood, for the reason that my argument will climax and culminate in a sort of motion asking this Court to conform these pleadings to the proof that is in the case. I do not mean now in that statement to argue here that this tribunal possesses the power to amend these charges in such way as it is necessary to contort or twist this tribunal into an impeaching body. That is not my argument. That is not my conviction. I realize and I concede with the utmost frankness that the Assembly, and the Assembly alone, is the inpeaching power of the State. That by no means precludes this Court from amending the impeachment or the indictment, for they are synonymous terms, to conform to the proof, the underlying, ever-present, basic exception being, that that amendment shall not work hurt or detriment or be unjust to this respondent.

And you will, I trust, indulge me in passing, the utterance of this remark: That if counsel for the Board of Managers felt

that in asking you to conform the pleadings to the proof we were subjecting ourselves even from counsel for the respondent to the slightest criticism of unfairness upon this trial, we would yield them any request they might see fit to make in that behalf. If they took the position they were surprised, what do you desire? If they take the position, in answer to this motion that but for the fact that we had supposed these pleadings would remain in their now form we would have produced other testimony to meet and combat the evidence of Mr. Peck and Mr. Morgenthau and Mr. Ryan; we grant you gentlemen the privilege. So that it can never be laid at our door that we have sought, by making this request, to take the slightest advantage of this unfortunate and most distressful situation.

Now, this Court of Impeachment is a Court of record.

Section 2 of the Code of Civil Procedure prescribes:

> " Each of the following Courts of the State is a Court of record:
>
> " First.— The Court for the trial of impeachments."

We have adopted as the rules that shall govern and control this tribunal this language — and I read it with exactness:

> " The introduction of evidence and the examination of witnesses and the conduct of the trial shall be governed by the rules now prevailing in the Supreme Court of this State."

And those rules in that phraseology have never — so far at least as information flows to me — obtained in any other trial for the impeachment of a public officer in the annals of this State.

Section 723 of the Code of Civil Procedure reads as follows:

> " The Court may, upon the trial, in furtherance of justice, and on such terms as it deems just, amend a pleading by inserting an allegation material to the case, or where the amendment does not change substantially the claim or defense, by conforming the pleading to the facts proved."

We start the discussion with the proposition then that this Court, acting under the rules which you have formulated for your guidance and your control, has the indisputable power in furtherance of justice, to conform in this case, the pleading to the proof.

The question arises and is germane here for discussion as to whether, in seeking to so amend the pleading as to conform it to the proof now in evidence, we are usurping the function of the impeaching power upon the one hand or doing injustice to this respondent upon the other.

My earnest contention is that this amendment, phrased in language that I shall submit later to your consideration, does not in any way impinge upon the respondent's rights, nor is it outside or de hors the section of the code to which I have invited your attention.

You will permit me to step aside for a moment from the logical order of my argument long enough to observe that the testimony of Mr. Peck and the testimony of Mr. Morgenthau is upon this record without objection. It is upon this record without practically cross-examination. Therefore, counsel at the time had no notion, no thought, and they are seasoned, experienced men, but what the testimony of both Peck and Morgenthau was material, competent and relevant evidence in this case. That is of more than passing consequence, for the reason that the cases hold that where no objection is made at the trial that evidence is not within the pleadings, there is no necessity for a motion to have the pleadings amended to conform to the proof. I am ignoring the tenor of that decision, going beyond it, and behind it, and above it, to ask, in order that these men may make any statement they please, my adversaries, I mean, or ask any relief that they please, so far as they claim that what we ask here may work without some possible injustice.

Article IV is the article under which this argument proceeds. In its now form it is in substance that the respondent was guilty of suppressing evidence and of violation of section 814 of the Penal Law of said State. I shall not read all of this:

> "In that the said William Sulzer practiced deceit and fraud, and used threats and menaces with intent to prevent said committee and the people of the State from procuring the attendance and testimony of certain witnesses, to wit, Louis A. Sarecky, Frederick L. Colwell and Melville B. Fuller, and all other persons,"

with intent that their evidence generally speaking should not be obtained. I do not think it requires any argument before this

tribunal, either lawyers or laymen, for you are makers of law, and triers of fact, to demonstrate that the words

> " and all other persons in a pleading includes each and every person to whom the evidence may point, or who may be concerned in the introduction of testimony under that article."

In other words it is the usual, natural, so-called saving or omnibus clause that pleaders always insert in an indictment or a civil pleading for the purpose of reaching just such testimony as fell from the lips of Mr. Peck and Mr. Morgenthau.

Therefore, we are left with Article IV seeking to bring the respondent within the provisions of section 814. That brings us to a discussion of section 814 and the prior or preceding section 813. Now, if this Court please, those sections 813 and 814 are substantially alike. I use that expression advisedly. They are, both sections, designed to reach out and punish a man who tries, in one way or another, to prevent the elicitation of the truth. Now, I will read them in order that you may judge my statement by the phraseology of the sections. I will read them in their inverse order, section 814, and I am only going to read, gentlemen, such portions of those sections as are material to this discussion.

> "A person who maliciously "— I will pause for a moment. Maliciously is an unusual word in a statute of that kind. It means intentionally, it means wilfully, it means unlawfully, it means deliberately; they are all synonymous expressions. There is nothing unique, peculiar, weird or strange about the word malicious. It means that a person does a thing intentionally, because he meant to do it, and no more.
>
> "A person who maliciously practices any deceit or fraud, or uses any threat, menace or violence, with intent to prevent any person being cognizant of any fact material in a proceeding from producing or disclosing testimony, is guilty of a misdemeanor."

Perhaps I might well have observed that the title to section 814 is " suppressing evidence." The title to section 813 is " inducing another to commit perjury," which, as a lawyer, I state is a misuse of language and practically a misnomer.

Section 813: "A person who incites or attempts to procure another to give false testimony, to commit perjury, or to withhold true testimony is guilty of a misdemeanor."

In other words, there is simply a difference in phraseology. The one is "who practices deceit and fraud, or uses any threat, menace or violence." The other is "Who incites or attempts" to accomplish the same result. The draughtsman of the Code was reaching out for the same offence; he was simply using different words, different phrases to clothe and garb the same idea. No practical difference that lawyer or layman is able to draw between those two sections.

I have read you the section of the Code of Civil Procedure with reference to amendments. There is substantially the same section in the criminal law. There is no practical difference. And I am reading this so that you may take either horn of the dilemma that you please. If you treat this as a criminal cause, I cite you to section 293 of the Code of Criminal Procedure. If you treat it as a civil cause, I cite you to section 723 of the Code of Civil Procedure. If you treat it — as I contend it is — a proceeding sui generis, in a case by itself, I cite you the both sections.

Now, section 293 of the Code of Criminal Procedure reads:

> "Upon the trial of an indictment, when a variance between the allegation therein and the proof in respect to time or in the name or description of any place, person or thing shall appear, the Court may, in its judgment, if the defendant cannot be prejudiced in his defence on the merits, direct the indictment to be amended according to the proof on such terms," and so forth, "as to the Court may seem reasonable."

Now, the thing sought to be reached in 813 and 814 was the unlawful influence exerted by inciting or attempting or by defraud or deceit or by menace or by violence, to keep somebody from furnishing evidence. So that in asking of this Court that it grant us general relief to conform the pleading to the proof, and in transforming this accusation from 814 so as to bring it within the scope of 813, we are simply asking you to grant the ordinary, casual, every day amendment granted and allowed as

a matter of course in jurisdictions all over the State of New York, either civil or criminal in their character.

As a suggestion that we are not in this argument seeking in any way to elicit from this tribunal a holding or a ruling that will make for the hurt of this respondent, it might be well for you to know — at least the laymen that compose this distinguished body — that the testimony of Mr. Peck made this respondent guilty of a much more serious and heinous offense than purports to be laid at his door upon the face of this impeachment. When Mr. Peck testified, after having at the Rensselaer Inn handed this respondent a five hundred dollar bill as a contribution to aid in the expense incident to his campaign, that later there came a time when he (Peck) received from the Frawley Committee a letter asking for information in regard to that contribution, and that he, in a moment of mental disturbance, went to the Executive Chamber and there had an interview with this respondent in which he showed him this letter and asked of him his advice in the premises and got back the reply: "Deny it as I shall," and followed that remark with the comment to the respondent, "Governor, I may be under oath," and received back the retort, "that is nothing, forget it."

I repeat, if that testimony is true — and who is here to say it is not — this respondent was guilty of the attempt of subornation of perjury. And that offense is a felony and upon conviction he would be punishable by imprisonment for one half the time to which he would be subject for the commission and upon the conviction of the main offence of perjury.

Now, if within this Chamber there be one member of this Court who has the slightest question about the correctness of that statement, I would be very glad to take your time to read the sections that demonstrate that proposition.

One who in this State procures another to commit perjury is guilty of subordination of perjury. The suborned is the accomplice of the suborner. One who attempts to induce another to commit perjury is guilty of a felony and, I repeat, punishable to half the extent of the man convicted of perjury. And in that case the man who is approached and solicited is not the accomplice of the man who attempts to suborn him, because the man

approached has not yielded to the blandishment, has not yielded to the promise of a bribe, has spurned it, therefore he does not come within the category of accomplices and upon his testimony, I repeat here, if there were a trial in a criminal court and the respondent was under indictment for an attempt to suborn Peck to commit perjury, it would be purely for twelve men to determine between the two who was telling the ruth. There need be no other corroboration of Mr. Peck than his word, assuming twelve men believe his story as against the story of respondent.

And, as bearing upon the question, upon the collateral issue, but pregnant with significance, is the testimony of Mr. Morgenthau and the testimony of Mr. Allan Ryan. The purport of the amendment which we seek to make is this — if those gentlemen that are interested will turn to Article IV.

Mr. Kresel.— Page 64 of the Record?

Mr. Stanchfield.— You can see wherein we purpose to change Article IV by making the pleading conform to the proof.

> "That the said William Sulzer then being the Governor of the State of New York, unmindful of the duties of his office and in violation of his oath of office, was guilty of mal and corrupt conduct in his office as such Governor of the State, and was guilty of a violation of section 813 of the Penal Law of said State, in that, while a certain committee of the Legislature of the State of New York named by a concurrent resolution of said Legislature to investigate into, ascertain and report at an extraordinary session of the Legislature then in session upon all expenditures made by any candidate voted for at the last preceding election by the electors of the whole State, and upon all statements filed by and on behalf of any such candidate for moneys or things of value received or paid out in aid of his election, and their compliance with the present requirements of law relative thereto,— while such committee was conducting such investigation and had full authority in the premises, he, the said William Sulzer, wrongfully, willfully and corruptly, attempted to incite and procure each of the following named persons, to wit, Louis A. Sarecky, Frederick

L. Colwell, Melville V. Fuller, Duncan W. Peck and Henry Morgenthau to commit perjury, and to give false testimony before and to withhold true testimony from the said Legislative committee, each of said persons being cognizant of facts material to said investigation being had by said committee, and some of them having in their possession certain books, papers and other information which would be material and competent evidence in the proceedings before said committee; that thereby said William Sulzer acted wrongfully, willfully and corruptly and was guilty of a misdemeanor, to the great scandal and reproach of the Governor of the State of New York."

In asking you to grant that relief I reiterate again while its phrasing is fresh in your memory that it does not change the basic character of the offense, the offense charged is practically the same, an effort to tamper with the administration of justice, an effort in some way to control and color and distort the testimony of a witness; a confession upon its face of the weakness of his cause, and an admission upon its face that he is obligated to support the defense, if any he may have, by dishonest means and evidence. We require, so far as the Board of Managers are concerned, no other testimony than that which is now upon the record to support at least to our contentment and satisfaction the charge embodied in the amended Article IV.

Once more we repeat, and I speak the sentiment of the Managers of the Assembly of New York, and I trust of high minded, fair minded citizens everywhere, that if, with that change in view the respondent feels now that he wishes in person to make answer from the witness stand or if he feels now in the light of that change that there is other testimony he desires to produce aside from himself, for he has the right to go on or keep off the stand as he may please, if, I repeat, he desires to produce other testimony to meet that accusation the door is open, and there will be no objection raised by the Managers of this trial.

Senator Duhamel.— Mr. President, I would like to ask Mr. Stanchfield that considering he has continually referred to the articles of impeachment as pleadings, whereas during the course of

this trial they have been called indictments, has he any reference of where any court has ever amended an indictment.

Mr. Stanchfield.— Yes, I will make that perfectly clear, Senator; first, these charges may be properly called within the history of impeachment trials either an indictment or an impeachment or a pleading. I am perfectly right from the technical standpoint in terming them a pleading, for the reason that the defendant when he was called upon to answer, had the right not simply to pleading not guilty, but the right to spread upon the record a complete explanation of the charges, if he was so advised, and in all the trials that have been had the phraseology of lawyers in their argument has been usually that of pleadings.

Senator Duhamel.—As a matter of information I would like to know:

Mr. Stanchfield.— If in answering your inquiry my argument will not run the gauntlet of cross-examination it is not worthy of hearing.

Senator Duhamel.— I would like to know the date that Mr. Peck appeared before the Frawley Committee.

The President.— Louder, please.

Senator Duhamel.— I would like to know the date that Mr. Peck appeared before the Frawley Committee.

Mr. Stanchfield.— He never appeared, Senator.

Mr. Herrick.— Shall I proceed?

The President.— Yes.

Mr. Herrick.— What time will we adjourn to-day?

The President.— Half past twelve.

Mr. Herrick.— I hardly know how to proceed with the argument of this case. The counsel who has opened —

Senator Pollock.— Mr. President.

The President.— Senator Pollock.

Senator Pollock.— I want to take the liberty of interrupting counsel and suggest that the hour is now twelve twenty-six, and, if we contemplate adjourning at twelve thirty, Judge Herrick would probably desire to take up his entire argument after the adjournment.

Mr. Herrick.— According to the wish of the Court. It makes no difference to me.

The President.— Is that the wish of the Court?

Judge Werner.— I move we now adjourn.

The President.—Adjourn Court until two o'clock.

The Crier.— Hear ye, hear ye, this Court will now take a recess until two o'clock this afternoon.

Whereupon, at 12:27 P. M., a recess was taken until 2 o'clock P. M.

AFTERNOON SESSION.

The Crier.— Judges of the Court of Impeachment.

The President.— Call the roll.

The Clerk thereupon called the roll, and found a quorum present with the following absentees:

Senator Fitzgerald.
Judge Gray.

The Crier.— Hear ye, hear ye, this Court now resumes its session from recess.

Mr. Herrick.— Mr. President and Gentlemen of the Court: You listened for nearly an hour to an address splendidly delivered with great elocutionary effect, with the grace that always characterizes the gentleman who addressed you; but you also listened to what seems to us an entire mis-statement of the law in the case; you also listened to an address which in substance conceded that article IV had not been sustained by the evidence in

this case. He failed to answer the questions that were propounded to us by the Court last night, and while it was a concession that portions of those questions could not be answered, still there may be a lingering doubt in the minds of the Court as to whether the evidence referred to is applicable to section 814 of the Code, and to article IV, and therefore I shall proceed to discuss them to some extent in accordance with the idea expressed by Mr. Justice Miller when he made the suggestion yesterday that there was some question as to whether the evidence of Peck and Morgenthau should be applied to any of the articles, or rather to article IV of this case, or whether, generally, upon all the articles charged. It seemed to us rather an extraordinary request to make.

We had considered article IV very seriously, as we had all the other articles, and we had considered this evidence of Mr. Peck, Mr. Morgenthau and Mr. Ryan, and it seemed to us that it did not reach article IV at all, had no bearing upon that, and could only be considered in the case, as we understood it to be introduced, as bearing upon the general features of the case, and the credibility, so to speak, of the respondent's defence.

The question put to us last night by the President was this:

> "The Court desires counsel for the parties to argue further the question whether the acts and conversations testified to by Peck, Morgenthau and Ryan, or either of them, can be considered as being acts of misconduct for which the respondent can be convicted under article IV, or only as corroborated evidence of the other allegations stated in the charges; and whether this Court has the power to amend the articles, if they are insufficient to include those acts, so as to include them."

In premising what I have to say, let me say that this Court is the highest in the State, as has been stated before, and it is under corresponding obligations to observe the law and establish no bad precedents; not convict a man upon a charge not brought against him; not permit a man to be charged with one offence and convicted of another. No lawyer, I venture to say, having the slightest regard for his reputation as a lawyer, would contend

for a moment that upon an indictment say for forgery, if the evidence showed that he obtained money by false pretences or by larceny, could be convicted of the larceny instead of forgery.

This, notwithstanding the assertions of my learned friend upon the other side, is a criminal trial, and governed by the same rules as other criminal trials. It has so been held repeatedly, punished as a criminal would be punished, punished by the greatest punishment that could be inflicted short of death. Disfranchisement as a citizen, disqualification from hereafter holding office,— one of the inalienable rights of an American citizen who is convicted of crime.

Let me say again, you cannot indict or impeach a man for crime in July, for crimes committed in the following September.

What does the fourth article charge? In general terms, that the respondent endeavored to prevent witnesses from giving testimony before the Frawley Committee. You will find on page 64 — necessarily relates to acts done before the articles of impeachment were adopted; could not refer to transactions that took place thereafter. The articles of impeachment were found August 13th. I am referring to page 59.

The conversation with Morgenthau took place on the 2d or 3d of September, as you will see by referring to page 758 of your record. With Ryan, the conversation took place the week before this Court convened.

Now, not a word was said to any of those gentlemen about their testimony. Not a single word to induce them how they should testify, to prevent their testifying or not prevent their going before the Frawley Committee, or to prevent their testifying before this Court, not an atom of evidence. But these transactions, these conversations taking place after the impeachment articles had been framed and found and presented, entirely eliminates the conversations of Morgenthau and Ryan from this case, unless you would grant the motion of our adversaries, which we will presently consider.

Now, as to Peck's testimony. Let us read the fourth article. It alleges a violation of section 814 of the Penal Law. What is that?

> "A person who maliciously practices any deceit or fraud, or uses any threat, menace or violence, with intent to prevent any

party to an action or proceeding from obtaining or producing therein any book, paper or other thing which might be evidence, or from procuring the attendance or testimony of any witness herein, or with intent to prevent any person having in his possession any book, paper or other thing which might be evidence in such suit or proceeding, or to prevent any person being cognizant of any fact material thereto, from producing or disclosing the same, is guilty of a misdemeanor.

Now, all those things are preceded by the " maliciously practicing any deceit, fraud or using any threat, menace or violence with intent " to do all these things.

Now, where is there a particle of evidence that any deceit, any fraud, any menace, any threat of violence was used as against Mr. Peck to prevent his testifying before the Frawley Committee? Not a particle. There must be a practice of some one of these things. There must be some one of these things done by the respondent to bring him within the provisions of section 814 and within the provisions of article fourth of the amendment, because article fourth of the amendment follows the language of section 814 of the Penal Law.

Now, I read Peck's testimony — we find it at page 778 — there is not a word to prevent him going before the Committee; not a single word to prevent him from testifying; no threat made to him; no deceit practiced; no fraud; no violence. It simply shows, in substance, " Deny it as I will." That is all.

He didn't attempt to keep him away from the Committee; uses no deceit; practices no fraud upon him; threatens no violence; doesn't menace him with the loss of his position; simply says to him, " Deny it," and then when he says " Supposing I am placed on my oath before the Committee," in substance, " forget it."

Now, that may be wrong. Assuming it all to be true, assuming that the Governor did wrong, if you please, still it doesn't bring it within gunshot of the language of section 814 of the Penal Law.

The nearest approach to it in the law is under section 813 reading as follows:

"A person who without giving, offering or promising a bribe, incites or attempts to procure another to commit per-

jury or to give false testimony as a witness, though no perjury is committed or false testimony given, or to withhold true testimony, is guilty of a misdemeanor."

Now, that is a separate and distinct offence, absolutely. It has no connection with section 814. It is a separate and distinct offence. It is asking a man to commit perjury. It is not assuming to withhold his testimony. It is not asking to keep away from the court or from the committee having the power to examine him. But it is a distinct invitation for him to commit perjury, to swear falsely. Now, that is just as separate and distinct an offense as the offenses charged in the 7th and 8th articles, if you please, or the offences charged in the 1st and 2nd articles, all of which have to do with money received and a statement made. There is some connection between them, but they are separate and distinct offences. Just as much so as any two of the several articles of impeachment included here.

If this suggestion of this argument came from the Managers — of course I must assume that it did not — I should say that it was an afterthought. Seeing that they had failed in establishing their case and having some evidence in the case admitted for good and sufficient reasons, but which were susceptible of an interpretation and of a use for some other purpose than that disclosed in the articles of impeachment, they now sought to drag it in to bolster up an otherwise destroyed and frail case. But coming, as it does, I must assume, that without sufficient consideration, and forgetting for the time being that where there is doubt, as expressed by the learned Justice who made this suggestion first as to this testimony, forgetting, I say, for the moment that where there is a doubt it must be resolved in favor of the defendant, we have been asked in here to consider and give our views to you as to the true bearing and meaning of this testimony.

The testimony of Peck, because practically that is the only testimony worth considering here, was admissible upon two theories. First, that it showed a contribution which the Governor had not reported in his statement, and second, that it gave coloring to the behavior of the defendant. That it showed a weakness in his proposed defence the same as may be said of the testimony of

Ryan, to the effect that the Governor sought him to have men of great political influence interfere with the action of this court.

Upon the theory that is set forth in the Nowack case in 166 N. Y. (reading):

> "Evidence tending to show that a party to an action tried to bribe a witness to give false testimony in his favor, although collateral to the issues, is competent as an admission by acts and conduct that his case is weak and his evidence dishonest. It is somewhat like an attempt by a prisoner to escape before trial, or to prove a false alibi, or by a merchant to make way with his books of account, except that it goes further than some of these instances, for in addition to reflecting on the case, it reflects upon the evidence on that side of the controversy. 'Where it appears that on one side there has been forgery or fraud in some material parts of the evidence, and they are discovered to be the contrivance of a party to the proceeding, it affords a presumption against the whole of the evidence on that side of the question, and has the effect of gaining a more ready admission to the evidence of the other party.' (1 Phillips on Evidence, C. & H. Notes, 627.) It is not conclusive, even when believed by the jury, because a party may think he has a bad case when in fact he has a good one, but it tends to discredit his witnesses and to cast doubt upon his position. It is for the consideration of the jury, after ample opportunity for explanation and denial, under proper instructions to prevent them from giving undue attention to the collateral matter to the detriment of the main issue."

So that this evidence which they say was admitted without objection was admitted because we had no valid objection to it, because it could be admitted for the very reason set forth in this opinion in the Nowack case, and not as matter tending to establish any subsequent act in the case, not as tending to establish any of the articles of impeachment.

Now, to consider this evidence for any other purpose is to import into the impeachment a new article of impeachment. It cannot be considered in regard to any acts set up in the articles;

it cannot be considered in the aspect of a new article. It cannot be considered as substantive evidence, because it is not placed in any of the articles. Now, this we think is sufficiently established in cases that have preceded this. One that I had occasion to refer to the other day, next, if not of more, importance in the history of impeachment cases than that of the trial of Andrew Johnson, that is in the trial of Hastings.

First, the lords resolved:

> "That the managers for the Commons be not permitted to give evidence of the unfitness of Kelleran for the appointment of being renter of certain lands in the Province of Bahar; the fact of such unfitness of the said Kelleran not being charged in the impeachment."

Then again, at a later day, the lords decided:

> "That it is not competent for the Managers for the Commons to put the following question to the witnesses upon the seventh article charged, viz. — whether more oppression did actually exist under the new institution than under the old."

The third, the lords resolved:

> "That it is not competent for the managers on the part of the Commons to give any evidence in the seventh article of the impeachment to prove that the letter of the 5th of May, 1781, is false, in any other particular than that wherein is is expressly charged to be false."

I cite European Magazine and London Review for February, 1794, pages 150 and 151.

So upon the trial of Judge Barnard it was attempted to introduce evidence in relation to declarations and statements made by Judge Barnard in relation to his judicial action. The evidence that was given was stricken out as incompetent and does not appear in the case. The Chief Judge, in striking it out, said:

> "I don't think that the testimony is competent; the conversation is not alleged in any article as a charge against Judge Barnard, and I don't think it bears upon any charge legitimately made against him; it relates to a transaction entirely outside of anything that is charged in the article."

After some discussion between counsel, the Chief Judge then said:

> "So far as I am concerned, my opinion is unchanged. This evidence is incompetent. The testimony drawn from Judge Birdseye was in the nature of a general admission relating to the motive or bearing upon the motive of Judge Barnard's judicial action. Now, I do not think it is competent to show a confession of the respondent as to a particular transaction — judicial or otherwise — which transaction is not alleged or set up in these articles as a charge against him. I do not think it is competent for the court to infer, from a transaction not alleged against him in these articles, a wrong as to the charges which are made. I will, however, submit the question to the Court, because they may differ with me upon that subject. The question is whether this evidence shall be received, and the clerk will call."

The ruling of the Court was sustained by a vote of ten to twenty-one.

Barnard trial, vol. II, pp. 1294–5–6.

I will not bother you any further as to the evidence of these three people, as to whether it bears upon article IV, or has any tendency to support them or not, because the argument of my learned and astute friend practically concedes that they do not, when he asks to amend, but my associate will consider it more at large.

The Court, I say, have no power to amend. Impeachments are like indictments. My friend practically concedes that.

The Court of last resort in this State has passed upon this power of amending indictments that my learned friend has referred to, and by the way, in passing, I might say this: He says that you have adopted rules by which you are to follow the rules of the Supreme Court. That is true. They are mere rules of procedure, however. They don't relate to matters of substance. The rules of practice of the Supreme Court of this State never interfere with any substantial right or any matter of substance, simply as to matters of practice. They would be unconstitutional if they did. So likewise, the power of amendment granted by the

Code of Criminal Procedure; amendments as to matter of detail; amendments to correct an irregular indictment; amendments to correct matters that are not of substance, not to import or inject into the indictment or the case any new matter that is of substantial consequence in the case.

Now I call your attention to an extract bearing upon that—a case in 196 New York, People v. Geyer:

> "The indictment charged that the subject of his alleged larceny was 'one written instrument and evidence of debt, to wit, an order for the payment of money of the kind commonly called bank checks, for the payment of and of the value of five hundred dollars,' and that the larceny occurred November 15, 1902."
>
> "The evidence tended to establish that at about the date mentioned a check for $500 was sent to the appellant in a fiduciary capacity and that he endorsed and deposited it to his credit as he rightfully might, and that his wrongdoing consisted in thereafter withdrawing and misappropriating the proceeds of the check thus deposited. It was perceived and conceded by the district attorney on the trial that the charge of the indictment was not sustained by this evidence as above summarized, by charging 'larceny of Five Hundred dollars, good and lawful money of the United States and of the value of Five Hundred dollars.' This amendment was allowed in spite of the timely and proper objections of the appellant and its allowance is one of the errors to be considered. As I have indicated, I think its allowance was improper.
>
> "The trial court permitted and the district attorney now seeks to justify this amendment under the provisions of section 294 of the Code of Criminal Procedure, which read as follows: 'Upon the trial of an indictment, when a variance between the allegation therein and the proof, in respect to time, or in the name or description of any place, person or thing, shall appear, the court may, in its judgment, if the defendant cannot be thereby prejudiced in his defense on the merits, direct the indictment to be amended, according to the proof, on such terms * * * as the court may deem reasonable."

" I do not think that this section contemplates or authorizes any such amendment as was permitted in this case. The general object of the section is perfectly obvious. It is in line with other sections of the Code and was intended to prevent the escape of guilty persons and a miscarriage of justice by reason of inconsequential technicalities, and to this end it materially enlarged the powers of the trial court to prevent any such undesirable results by amendments of the nature specified.

" It not infrequently happens that an indictment sets forth many details which are proper in alleging and describing the crime, but which surround and in some degree characterize, rather than constitute the real substance and body of the offense charged and the allegation of which may be amended without changing the identity of the crime or of the subject of the crime and without impairment of the rights of the accused person. Such amendments are within the letter and spirit of the statute. But of course it could not have been and was not the purpose of the Legislature to attempt to authorize the trial court by amendment to change the substantial elements and nature of the crime charged and in effect substitute a new indictment in the place of the one found by the grand jury.

" Illustrations of the two classes of amendments which might be proposed readily occur to the mind. If the indictment charged the accused with stealing a horse and alleged that the latter was of one color or of one age, when as a matter of fact it was of another, it is apparent that the court would be justified in allowing an amendment to cure this variation of evidence. The substance of the crime charged in either case would be the larceny of a horse; the latter's age or color would be an inconsequential detail. If, on the other hand, the indictment having charged the accused with stealing such a horse, the evidence should show that he had in fact stolen a wagon or some entirely different article of property than that specified in the indictment, it is quite clear that the court would not be justified in amending the indictment to fit the evidence. In such case the very substance of the crime would be involved in the variation and to permit the amendment would quite change the identity of the crime, although in either case it might continue to be grand larceny.

" The amendment under consideration in this case is of the latter character rather than of the former. The appellant was charged with stealing a check on a given date. He was convicted of misappropriating at a different date the proceeds of a check which he had a perfect right to receive and procure to be cashed. The property set forth in the indictment and that for the alleged larceny of which he has been convicted, were entirely distinct and distinguishable. The check mentioned in the indictment had a well defined character and value of its own, and for the purposes of this discussion is not to be regarded at all as the same thing as bills or coin. The variation between indicting a man for stealing a horse and convicting him for stealing articles of household furniture would not be any more pronounced in principle than the variation between the indictment and proof in the present case. In fact the very authorities cited by the district attorney to sustain his position on this appeal make it perfectly clear that he is wrong, and that this amendment is not of the character authorized."

So I say charging a man with asking a witness to keep away from a hearing is an entirely different offense from that of advising them to commit perjury; different morally; different in every aspect of the case and recognized by the law of the State as two separate and distinct offenses, embodied as it is in two separate and distinct provisions of the Penal Law.

In the case of People v. Schrank, 88 App. Div. 294, Schrank was indicted for a felony in abducting a child under the age of fourteen years, and thereafter feloniously, wrongfully and unlawfully deserted the child with intent wholly to abandon such child, against the form of the statute in such cases made and provided.

In moving for trial in that case, the defendants withdrew their plea of not guilty and demurred to the indictment on the ground that the facts stated did not constitute a crime. The court on motion of the district attorney overruled the demurrer and allowed the indictment to be amended by striking out the word " fourteen " therein and inserting in lieu thereof the word " six," so thereafter the indictment charged the abandonment of a child under the age of six years.

Now here is what the Court says:

"At the time this indictment was found by the grand jury it was a crime to desert a child by those who had the care and custody of it only in the event that the child was under the age of six years. By chapter 376 of the Laws of 1903 that section was amended so as to make it a crime if the child deserted was under 14 years of age. But prior to September 1, 1903, when that amendment took place, it was no crime to desert a child under 14 unless it was also under 6 years of age."

"So the question is presented here when the facts stated in the indictment do not constitute any crime, the Trial Court may amend it in inserting therein further and other facts which if proven would show that the defendant had committed a crime. I am of the opinion that such an amendment cannot be allowed. The indictment must be found by a grand jury and if the one which it presents does not state any acts of the defendant which constitutes a crime no conviction can be had thereon."

In other words, the trial court has no authority to find an indictment against the acts that seem to have been the proceeding in this case.

In the 207 N. Y. was the case where a writ of habeas corpus (People ex rel. Howey v. Warden, 207 N. Y. 354). I will read from page 359. I say a writ of habeas corpus had been sued out to obtain the discharge of a prisoner held under a warrant of commitment. I read this. There was evidence in the case showing that he was guilty of some other crime than that set forth in the commitment and warrant:

"It is, however, urged that although the evidence before the Magistrate did not warrant the commitment and confinement of the relator on the charge specified, it did tend to establish the commission by him in the county of Kings of the crime of conspiracy to commit rape, and that, therefore, it was the duty of the Justice before whom this writ was made returnable to hold him to bail in accordance with the provisions of section 2035 of the Code of Civil Procedure. That

section provides: 'If it appears that the prisoner has been legally committed for a criminal offense, or if he appears by the testimony offered with the return, or upon the hearing thereof to be guilty of such an offense, although the commitment is irregular, the Court or Judge, before which or whom he is brought, must forthwith make a final order to discharge him upon his giving bail, if the case is bailable; or, if it is not bailable, to remand him.'

"This proposition precipitates the inquiry whether a warrant of commitment which specifies as the crime with which the accused is charged, and for which he is held to answer, an offense which is not supported by the evidence and wholly fails to specify an entirely different crime which the evidence does tend to establish, is simply 'irregular' and may be made the basis for holding the accused in habeas corpus proceedings on account of the latter offense. It seems to me that this cannot be the meaning of the section.

"The warrant of commitment is the whole authority for the confinement which is being inquired into in the habeas corpus proceedings. The statute requires that it shall specify the offense which the imprisoned party is charged with (Code Crim. Proc., Secs. 213, 214) and the authorities determine that this requirement is so essential and fundamental that a warrant which fails to comply with it is wholly ineffective and void. (People ex rel. Allen v. Hogan, 170 N. Y. 46).

"This being so, it seems to follow that a Judge sitting in habeas corpus proceedings would have no authority to remand the accused for further confinement under this warrant of commitment, because the evidence disclosed to his mind the probable commission of a crime by the accused radically differing from the one named and with which he had never been charged, and as to which no examination had taken place, and on which he had never been committed by the Magistrate who alone had authority to commit. Such a result would involve not the disregard of a mere irregularity in the warrant but practically the commission of the accused to confinement by a new warrant made by the Judge in a habeas corpus proceeding rather than by the committing Magistrate."

Then, too, as bearing upon the fact that a man should not be convicted excepting upon the indictment found against him, no matter what crimes are shown up to have been committed during the progress of the trial, I read from the same volume, the case of the People against Pettanza, 560. It was suggested by the Presiding Justice that we should not mention names here, so that I have not mentioned the names of the judges writing opinion:

> "After reciting the evidence as to other crimes other than that charged in the indictment, the learned justice proceeds, and also the peculiar atrocity of the crime charged against him, but the atrocity of the crime charged does not justify a disregard of rules of law, firmly established in our jurisprudence for the protection of all alike. The defendant was not to be convicted of the crime of kidnapping the Longo boy with which he was charged, because his sister was intimate with the Sirisis, or had herself been concerned in another kidnapping case, or because he unlawfully had dynamite in his possession, an offense with which he was not charged, or because he was acquainted with a man of the same nationality, whose picture was in the 'Rogue's Gallery,' and who had sent Blackhand letters and committed other misdeeds. A defendant, charged with a criminal offense, must be prosecuted according to the forms of law and his guilt must be established if at all, by legal evidence, no matter what his origin, his station in life, or his associations may have been, and no matter what other offense he may have committed."

So as to the analogy that is attempted to be drawn between this case and the case where indictments have been found. Now, next if this indictment — I think these few cases that I have cited to you are sufficient to establish the fact of the law to be that it could not be amended by setting up this new offense that is charged here; that is, a violation of the Penal Code, of a different section of the Penal Code than that has been heretofore charged, and I also assert that this Court cannot amend it. You cannot add new articles, and this is in effect a new article of impeachment. The article four charges violation of section 814 of the Penal Law. This proposed amendment charges us with violation of section 813

of the Criminal Law. That is a new article. It is a new offense, imported into the case. The only authority in this State under our Constitution to prepare articles of impeachment, to find articles of impeachment, is the Assembly, and you are here to try the articles that they find and no others.

Now, in the case of Barnard, volume I, page 192, where the discussion was up in regard to striking out an article, or if it was not to be stricken out, to amend it, Chief Justice Church said this:

> "Mr. President.— I am inclined to think that the allegation to which objection is made ought not to have been in these articles, but it seems to me that this court has no power to strike out any portion of these articles or amend them in any manner. They come here from the Assembly; and if there are any allegations that are improper in any of the articles, and evidence is offered of those allegations, and that evidence is immaterial and incompetent, that is the place it seems to me to raise the question, and we have no power to alter or change these articles in any manner whatever. They are presented here for us to try. Of course, we can determine upon the sufficiency of the matter, but we cannot strike out or change them."

In the case of Dorn —

Mr. Stanchfield.— The motion was not to amend in the Barnard case.

Mr. Herrick.— The suggestion was made. The motion was made upon the argument.

Now, in the trial of Dorn, page 68. This was a motion to strike out also, but hear what the judge says: And this bears upon the argument that impeachment is not a criminal proceeding. My investigation of all the cases of impeachment that have come under my observation, they have all been treated as a criminal trial, as a criminal proceeding, to be governed by like rules as other criminal trials.

> "Judge Mason.— Mr. President, there is nothing so entirely 'sui generis' in the proceedings of a court of impeachment, that is to say, so very different from the proceedings

of any other criminal trial. Upon the ordinary proceedings in criminal trials, the grand jury of the county presents the indictment charging the accused with a criminal offense. There are certain well established rules in the law by which the indictment is to be framed, and which is to govern the court by which it is to be tried. The grand inquest of the county which presents the indictment (and which is drawn by the district attorney) must, in the framing of the indictment, conform, to these general rules.

" The court which tries such indictment has no more power of amendment, no more right to strike out and put in than has this court of impeachment upon the trial of these articles. The court must take the indictment as it is presented to them by the grand jury and pass upon its sufficiency. The criminal courts, to be sure, have well established rules as guides in judging of the sufficiency thereof, and more so than has a court of impeachment.

"A motion to quash any one count in an indictment may always be entertained by the court having authority to try an indictment. It is, however, always discretionary with the court whether it do so or not. The question here raised by the honorable the Managers of the House, is, that this court has not jurisdiction to entertain a motion to quash any of these articles. This court stands precisely in the same position, with reference to the trial of these articles of impeachment, as does any criminal court which tries an indictment.

" These articles are presented to us, and we must dispose of them in the form in which the honorable the Assembly sees fit to present them to us, without amendment or alteration. But to say we have not the power or right to judge of them on a motion to quash any articles presented here, if it fails to state an impeachable offense, is to say what I do not believe."

And subsequently the article was quashed; but here is the precise statement that it is a criminal offense, a criminal trial, to be governed by the rules applicable to the trial of criminal cases, and that the case must be tried upon the articles of impeachment as

presented by the Assembly, without alteration and without amendment.

Test the question by this: Suppose you find him not guilty upon all the other articles of impeachment presented here, and that you do find him guilty of violating section 813 of the Penal Law, then you will have found him guilty upon something that the Assembly never presented to you, upon evidence that we have a right to assume was never presented to them; you will have found him guilty upon an article prepared by yourselves; you will have impeached him, and tried him upon the impeachment articles made by yourselves, and not by the Assembly.

Now, I want to be brief in this matter. If there is a determination to convict this man here, do it without any violation of the law. It is related that one of the judges of the old Court of Appeals — not one of the present Court — said that "when me and Judge So-and-so make up our minds to beat a man, we can always find a way to do it." If there is determination in the majority of this Court —

The President.— Judge Herrick, I don't think that is very material to this argument.

Mr. Herrick.— I simply want to say this: That no precedent should be set here as to the law. As to the facts, that sets no precedent as to the future, but your determination here upon a question of law is something that abides until it is changed by the Constitution itself.

There are articles here setting forth impeachable offenses, without evidence to sustain them, and for the benefit of the future, to prevent the establishment of any bad precedent, it would be better far that he should be convicted on an article that legally charges an offense, although there is no evidence to sustain it, rather than that this Court should import into it something that had never been charged and something that only the Assembly had the right to place in it.

The President.— Now, Mr. Marshall.

Mr. Marshall.— May it please the Court, to my mind, the attitude taken by our opponents in this matter is virtually a plea of

bankruptcy, so far as the fourth article of impeachment is concerned. It is practically an admission that that article is insufficient to warrant the plea of guilty as against this defendant; and that is demonstrated by the fact that counsel comes here, in cold blood, and presented to us an entirely new article in lieu of Article IV, which cannot be recognized as in any way based upon the same provision of law, or upon any of the same facts as those which are set forth in that article. They have virtually taken a poodle dog and cut off his head and tail, his fore legs and his hind legs, and are seeking to substitute other tissue and to make of it a wolf.

They have cut out every allegation which brings the case under section 814 of the Penal Law, and have substituted new allegations to make a case under another section. And, forsooth they say there is no difference between section 813 and 814, although the language is entirely at variance in the one case from that which is used in the other.

It is a remarkable suggestion to say that the Legislature of this State should have sat down in cold blood with the aid of lawyers who framed the criminal law, and to have repeated in section 814 what is said to have been formulated in section 813. I had always supposed that it was a maxim of interpretation, a well recognized principle of law, that the Legislature is not supposed to do a vain or useless thing, or to indulge in useless repetition in respect to so important a statute as the Penal Law of the State.

My friend comes here and disavows any intention to amend the articles of impeachment. He practically recognizes the fact that this Court has no power to formulate new articles of impeachment, but then he proceeds and attempts to do that very thing, by substituting an entirely new article of impeachment upon the pretense that this is not a criminal proceeding, and, therefore, section 723 of the Code of Civil Procedure applies; or, even if it is a criminal proceeding, then section 293 of the Code of Criminal Procedure applies; or, if it is not wolf, fish, flesh or good red herring, that both apply, and therefore, we can come to the same result, change their case right in the face of the judgment, after all the evidence has been concluded, and substitute for the

proposition which we have been called upon to meet an entirely different one.

Now, as to whether this is a criminal proceeding, I shall not attempt to repeat the argument which I have made heretofore with regard to that point. All that I desire to do is to call attention once more to the authorities which I have collated on pages 1428 to 1429, on that subject. They go into the authorities,— I was almost going to say to such an extent as to tire the Court, but, in view of the fact that so great a lawyer as my friend Mr. Stanchfield now, at this late date, takes issue upon the proposition, I find that perhaps I have not done amiss when I have in some detail given the authorities upon that subject.

I call especial attention to the language of Chief Judge Church in volume 3 of page 2070 of the Barnard trial, where he says: "But we are here in a criminal case," defining the case of impeachment to be a criminal case. Now, the question suggested for argument relates to the power of the court to amend the articles of impeachment so as to include the acts testified to by Peck, Morgenthau and Ryan. We insist that no such power of amendment exists, and that an attempt to exercise it would be a violation not only of section 13 of article VI of the New York Constitution and of section 1 of article VI of that Constitution, but of the 14th amendment to the Constitution of the United States as well.

The right to impeach, to present and formulate articles of impeachment is vested in the Assembly alone. This Court can only hear and determine charges presented by the Assembly. It cannot usurp any of the functions of that body. To do so would deprive the respondent of his liberty and property without due process of law. It would forfeit his office and its emoluments. It would forever take from him the right and privilege of holding office, a right vested in all male citizens of the State not convicted of crime.

For these reasons we at this time solemnly object and protest against any amendments of the Articles, as violative of the New York State and of the Federal Constitution.

Article VI, Sec. 13 of the Constitution declares:

> "The Assembly shall have the power of impeachment by the vote of a majority of all the members elected."

This tribunal is only for the trial of an impeachment duly voted, and is without other jurisdiction. As stated in section 12 of the Code of Criminal Procedure:

> "The Court for the trial of impeachments has power to try impeachments, when presented by the Assembly."

By section 17 it is provided:

> "Upon the delivery of an impeachment from the Assembly to the Senate, the President of the Senate must cause the Court to be summoned to meet at the Capitol in the city of Albany on a day not less than 30 nor more than 60 days from the day of the delivery of the articles of impeachment."

Section 18 continues:

> "At the time and place appointed and before the Court proceeds to act upon the impeachment, the Clerk must administer 'the oath or affirmation' duly and impartially to try and determine the impeachment."

What impeachment is referred to? That voted by the Assembly and no other.

Section 118 of the Code of Criminal Procedure enacts that when an officer of the State is impeached by the Assembly the articles of impeachment must be delivered to the President of the Senate.

Section 119 then states:

> "The President of the Senate must thereupon cause a copy of the articles of impeachment with a notice to appear and answer the same at the time and place appointed for the meeting of the Court, to be served on the defendant not less than 20 days before the day fixed for the meeting of the Court.

By section 120 it is declared that service must be upon the defendant personally, and if he cannot on diligent inquiry be found in the State the court may order publication to be made of a notice requiring him to appear at a specified time and place and answer the articles of impeachment.

It is thus shown beyond cavil that the Assembly alone possesses the power to impeach and to formulate articles of impeachment,

and that this court is confined to the articles of impeachment served on the respondent, and that it cannot convert its status and jurisdiction from that of judge to that of accuser, the two functions being separate and independent and inconsistent. It would be most extraordinary if at the close of a long trial of articles of impeachment voted by the Assembly the court could amend the articles by adding a new charge depriving the respondent of the right to be heard and the time for preparation which under the law he is accorded with respect to the charges voted by the body which is the constitutional accusing body.

Authority is not wanting to sustain our contention that the power to amend is vested neither in this court nor in the impeachment managers, but resides solely in the Assembly acting by a majority of all the members elected thereto.

This same question arose in Leese vs. State, 37 Neb. The same case is reported in 20 Lawyers Reports Annotated, page 579. Although five weeks ago, at the beginning of this trial I cited this case and the citation appears at pages 83 and 84 of the record, still in view of the time that has elapsed and the fact that my friends don't seem to have been impressed by the authority, I shall presume upon the patience of this court once more to read that decision since its reasoning seems conclusive as to the point which we now have under consideration.

Now, that was a case of impeachment. Under the Constitution of the State of Nebraska the impeachment — powers of impeachment are vested in the two Houses of the Legislature in joint convention, and the impeachment is then heard and tried before the Judges of the Supreme Court of the State. Now, in that case the Legislature of Nebraska adopted and presented to the Supreme Court articles of impeachment against William Leese, ex-Attorney-General, charging him with misdemeanors in office during the period of his Attorney-Generalship. Within the time fixed by the court the respondent answered the articles of impeachment exhibited and presented against him and to each and every specification. Subsequently the Managers appointed by the Legislature to prosecute the charges asked leave to amend, in matter of substance, certain of the specifications in the articles of impeachment to which proposed amendments

the respondent objected. At the hearing, the application to file amended specifications was denied. We will now briefly state the reason for the conclusion then reached. After citing the provision of the Constitution of the State to which I have referred, the Court proceeds:

> "By the foregoing provision the exclusive power of impeachment is conferred upon the Legislature. Both Houses of that body are required to meet in joint convention to act upon a resolution to impeach a State officer for any misdemeanor in office, and such a resolution can only be adopted or carried by the affirmative vote of at least a majority of all the members elected to the Legislature. The authority thus given carries with it the power of the Senate and House of Representatives, under like restrictions to adopt suitable articles and specifications in support of their impeachment, and likewise the authority to adopt and present additional or amended articles or specifications whenever it is deemed proper or expedient so to do. But such power can no more be delegated by the joint convention to a committee or Managers of Impeachment, appointed by it, than the Legislature can confer authority upon a committee composed of members of that body to enact a law, or to change, alter, or amend one which has been duly passed, and in neither case does the right exist.
>
> "Impeachment is in the nature of an indictment by a grand jury. The general power which courts have to permit the amendment of pleadings does not extend to either indictments or articles of impeachment. The uniform holding of the Courts, except where a different rule is fixed by statute is that when an indictment has been filed with the court, no amendment of the instrument in matter of substance, can be made by the court, or by the prosecuting attorney, against the consent of the accused, without the concurrence of the grand jury which returned the indictment." Citing a number of cases, including People v. Campbell, in the 4th of Parker's Criminal Reports at page 386, and the great case of Ex parte Bain, 121 U. S. 1; also decisions from Alabama, Mississippi, North Carolina and Wisconsin.

"We have no hesitancy in holding that the Managers have no power or authority to change in any material matter the specifications contained in the articles of impeachment exhibited against the respondent. If they could do that, it necessarily follows that they could exhibit new articles of impeachment or specifications, preferring charges against the respondent, not included in the original accusations made against him, and which the sole impeaching body, the joint convention of the Legislature might have rejected, had they been submitted to it for consideration. To hold that the Managers of impeachment have the right to do that would be to disregard both the letter and spirit of the Constitution.

"In reaching the conclusion stated above, we have carefully considered and given due weight to the last paragraph of the articles of impeachment, which reserves to the Senate and House of Representatives of the State of Nebraska, in joint convention assembled, 'the liberty of exhibiting at any time hereafter any further articles or other accusations or impeachments against the said William Leese, late Attorney-General of the State of Nebraska.' All that can be reasonably claimed for this provision is that the joint convention of the two Houses of the Legislature reserved the right to adopt other and additional articles of impeachment against the respondent. But the Legislature has not preferred other or further accusations against him, nor does the clause above mentioned attempt to confer such authority upon the Managers of impeachment. If it had done so, as we have already seen, it would be repugnant to the letter and spirit of the Constitution."

The case which I have just cited as well as many others which have been referred to in the course of the trial show that the impeachment proceedings are in fact criminal proceedings. The same rules of procedure and of evidence apply to both. Articles of impeachment are the equivalent of an indictment, and while perhaps not as strictly construed, the essential characteristics are the same, and the fundamental principles governing them are identical. For that reason the authorities which bear on the right to

amend indictments are equally applicable to the amendment of articles of impeachment. That was expressly decided in State v. Leese.

In fact the authorities on which the court proceeded were cases relating to the amendment of indictments.

I might here say a word with regard to the discovery which counsel has made that this cannot be a criminal proceeding because of the provision in section 6 of Article I of the Constitution that one cannot be twice placed in jeopardy. Well, that is very true unless the Constitution makes an exception. But in this particular case the Constitution makes an exception because it does permit an indictment as well as an impeachment and one is not considered to be a prevention of the exercise of the other power.

There is also the provision of the Constitution that a man shall not be compelled to be a witness against himself. That certainly is applicable to these proceedings as well as all the other safeguards of the Constitution. I have heretofore called attention to the fact that impeachment is used all through the Constitution in juxtaposition with the phrase " crime or crimes, or offences," both with regard to the subject of indictment, and also with regard to the subject of pardon and reprieve and commutation.

Now, the case of People v. Bain — of U. S. v. Bain, is a case where an indictment charged the offence of making a false report to the Comptroller of the Currency with the statement that it was with the intent to defraud the Comptroller of Currency. Upon the trial it was sought to amend the indictment by striking out these words which related to practicing deceit upon the Comptroller of the Currency. The motion was granted, but the Supreme Court of the United States declared in the Bain case that that deprived the proceedings of all validity. It deprived them of due process of law, and therefore, discharged the prisoner upon a writ of habeas corpus, because of the fact that the indictment could not be amended, even in that rather unimportant particular.

Now, it was decided in this State in People v. Campbell in the Fourth of Parker, 386, that an indictment which charged one with stealing a dog could not be amended so as to have it state that the dog was a tame dog as distinguished from one who was fiere

notari, and even though that amendment was made with the consent of the defendant, it was held that the conviction could not stand and would have to be set aside. And this case has been approved as one of the leading cases, in various States of the country.

Now, although section 293 of the Code of Criminal Procedure has enacted a statute of jeoparts, it relates exclusively to matters of form and not to those of substance. It relates to the ordinary variances in description, or in names, where names and description are not of great moment, but it does not permit a change of allegation as to the essential nature or character of the crime, or the addition of allegations of another crime, or the substitution for the crime alleged of one of a different nature. It has already been read here, and is as follows:

> "Upon the trial of an indictment when a variance between the allegations therein and the proof in respect to time or in the name or description of any place, person or thing shall appear, the court may, in its judgment, if the defendant cannot be prejudiced in his defense on the merits, direct the indictment to be amended according to the proof on such terms as to postponement of the trial, to be had before the same or another jury, as the court may deem reasonable."

In speaking of similar legislation it is stated by various authorities and which are found in the 22d volume of the Encyclopedia of Procedure under the title "Indictment and Information," at page 434, that courts cannot permit amendment as to matters of substance, for as amended it would not be the finding of the grand jury.

Now, the Court of Appeals, as has been shown in the argument of Judge Herrick, has recently had occasion to pass upon this very statute and the limitations upon the power of amendment so far as they have been conferred by the statute.

The case of People v. Geyer, in 196 of N. Y., has been referred to. Now, in that case the indictment as it was framed charged larceny under subdivision 1 of section 1290 of the Penal Law because it stated the wrongful taking of a check. The amendment that was made changed the offense to one under subdivision

2 of section 1290 by alleging that it was the money which had been collected upon that check, and which had been deposited by the person who had collected the check and had been taken by him out of the account after it had been deposited, thus creating the offense of embezzlement as defined in subdivision 2 of section 1290. Yet, although the crimes were defined in one and the same section, this court held that there could not be an amendment.

Now, our friends come here and say you can eliminate the crime which is charged in section 814 and which is described in the articles of impeachment here according to the language of 814, and you can substitute a crime which is set forth in an entirely different section, section 813, with different language and with different circumstances attending it.

Now, my associate omitted to call attention to the case of People v. Bromwich in the 200th of New York, at page 385, which is a most admirable illustration of the limitations which the Court of Appeals has recognized as existing in section 293 of the Code of Criminal Procedure, because the Court recognized that if the section 293 undertook to extend the power of amendment to such an extent as to substitute one description of one offense for another, it would be in violation of the Constitution which requires the presentment by a grand jury as the condition precedent to a criminal prosecution. It would be absolutely in violation of our Constitution, as in the Bain case it was declared that an attempt to amend would be in violation of the Federal Constitution.

Now, reading from the opinion in that case, which is very brief and which will very clearly indicate how the Court of Appeals views this section, we find the following, and it is the decision of a unanimous court:

> "The defendant was indicted and convicted for the crime of false registration in appearing before the inspectors of election for the Fifteenth Election District of the Thirty-first Assembly District in the county of New York as a voter in such district, he not being a qualified voter in such district, nor a citizen of the United States or of the State of New York, nor an inhabitant of such election district for the last thirty days preceding the date of election. On this in-

dictment he was tried and convicted of the offense and the Appellate Division reversed the questions of law and found no error, without having examined the facts therein. The first error of which the defendant complains is that on the trial the prosecution was allowed over his objection and exception to amend the indictment by inserting the Thirty-fifth Assembly District in lieu of the Thirty-first Assembly District wherever the words appeared therein. The learned judge who wrote for the majority of the Appellate Division was of the opinion that the amendment was authorized under section 293 of the Code of Criminal Procedure. We entertain a different view. While the indictment contains but a single count, the defendant is alleged to have violated the law and been guilty of a crime for two different reasons. First, because he was neither a citizen of the United States nor of the State of New York. Second, because he was not an inhabitant of the election district thirty days previous to the date of election. Under the first allegation the defendant would be guilty of the crime no matter in what election district he registered, and had the indictment contained this single allegation the amendment would clearly have been justified under the provisions of the code quoted. The statement of the election district would not be any element of the crime, but a mere specification of the particular place in which the crime was committed. Not so, however, as to the second allegation of the indictment. There the crime charged is that the defendant registered at a particular election district where he was not entitled to vote because he was not an inhabitant of that district. The particular district in which the registry was obtained was an essential element of the crime. The Grand Jury have not found that the defendant was not an inhabitant of the Thirty-first District, which was necessary to constitute a crime under the amendment of the indictment. In other words the amendment is not merely in the description of the defense, but in the identity of the offense. An amendment by this Court is not permissible."

I also call attention to the case of People v. Poucher, in the 30th of Hun, at page 507.

If such an amendment as I have just indicated to an indictment, namely, merely changing the number of the election district — if it was held under such circumstances as have been narrated to be beyond the power of the Court, beyond the power of amendment, how is it possible in this case to permit such an amendment as has been suggested?

Suppose we were now trying this case before a court and jury under an indictment framed as Article IV was originally drawn, and my friend should then come before the court and ask to amend that indictment in accordance with the allegations which he has read to your Honor this afternoon?

Is there anyone here who would for a moment suppose that any court would listen with equanimity or patience to such a suggestion? If my friend were occupying the position of counsel for the defendant in such circumstances, I can imagine the volume of eloquence which would be urged against the outrageous suggestion and the picture that he would paint of injury to the cause of justice, and he would be entirely right if he attempted to do that.

These decisions are in accordance with the underlying principles of justice, without which it would be but a tinkling of brass.

One charged with malefaction must first be informed of the precise nature of the charge which he is to meet; he must be accorded opportunity for investigation and for preparation, and to determine upon the course of action which he is to pursue. Legal decisions would become "springes to catch wood cock with all" if when one were cited in court to meet a charge of larceny he could be compelled to go to judgment on a charge interpolated at the twelfth hour of subornation of perjury, conspiracy, embracery or whatever ground man may devise. It would be but an introduction into our jurisprudence of the ancient fable of the wolf and the lamb.

That the present articles are insufficient to admit of action by this Court with respect to the matters referred to in the testimony of Morgenthau, Peck and Ryan scarcely requires argument.

Without repeating the propositions which were referred to in our main argument as to the nature and sufficiency of the fourth

article, framed as it avowedly is, under section 814 of the Penal Law, which it seeks to follow in haec verba, there is nothing in the evidence which indicates that the respondent practiced any deceit or fraud, or used any threat, menace or violence as against Morgenthau, Peck or Ryan to prevent them from testifying or discussing any material fact in any suit or proceeding.

Certainly the words deceit and fraud are to be used in the same light. They are words ejusdem generis, and therefore clearly bear as to the case against the person whose testimony is sought to be prevented.

We will not now discuss serious question as to whether this is an action or proceeding within the meaning of section 814, or whether the hearing before the Frawley Committee was such an action or proceeding. The decision of the court of appeals in the Matter of Deorge, 197 N. Y., p. 44, would seem to indicate that it is not. We take the broad ground that the testimony referred to does not constitute an offense under section 814, even if it might be argued that it does come within section 813, but that would not enable the court to consider that testimony as establishing a substantive charge under that section, if, for no other reason than because the articles of impeachment in no manner refer to any violation by the respondent of section 813, and have not given him due notice such as constitutes due process of law, so far as such charge is concerned.

If the facts testified to by these witnesses indicate the commission or the purpose to attempt to commit any illegal act it is that set forth in section 813 of the Penal Law, or in section 580 of that statute, although it is necessary for us in connection with this argument, to disclaim any such purpose or intent, or any admission as to the truth of the matters as to which testimony has been given.

It appears at a glance that these offenses are entirely different and distinct from those set forth in section 814 and described in the fourth article of impeachment. Incitement to perjury and the giving of false testimony is a totally different offense from practicing fraud, deceit and using threat, menaces, or violence against those whose evidence is sought to be suppressed in an action or proceeding.

It would be the first time in a case of impeachment, than which no judicial inquiry can be more solemn, and none should be more hedged about with protective safeguards, that so revolutionary a method of procedure has been adopted. It would make what is popularly known as "railroading" an innocent pursuit. There would be no precedent for it in criminal proceedings in a government which protects even the meanest criminal and affords him the guarantee of due process of law. Not even an habitual criminal would be deprived of the right to be tried on a regularly formulated charge, and none other. Not even in a court action where less stringent rules of procedure apply would such a contention as that which is now made be tolerated.

Our friends claim that this case can be governed by section 723, and the Court can now conform the pleadings to the proof by changing the allegation upon which we were called to trial and substituting this entirely different one. To show that my friends have not read the authorities to advantage I will now cite a number of civil actions to indicate that the rule is not as they claim it to be; on the contrary that the rule is just the converse, that on a trial it is not permitted to change the character of the action or the character of the charge that is made against the defendant and permit an entire change of the nature of the cause or its theory.

In Southwick v. First National Bank of Memphis, 84 N. Y. 429, Judge Earle said:

> "Pleadings and a distinct issue are essential in every system of jurisprudence, and there can be no orderly administration of justice without them. If a party can allege one cause of action and then recover upon another his complaint will serve no useful purpose but rather to ensnare and mislead his adversary. Here the defendant was brought into court to answer a complaint that he had violated his promise to apply the proceeds of the draft, and he took issue upon the alleged promise and when he came to trial he was held liable not for any breach of promise but for the money paid by a Boston firm on the ground of a conversion of the draft or a mistake of facts which induced the payment of the money."

In Day v. Town of New Lots, 107 N. Y. 148, the Chief Justice said:

> " The rule that judgment should be rendered in conformity with the allegations and proofs of the parties, secundum allegata et probata, is fundamental in the administration of justice. Citing Wright v. Delafield, 25 N. Y. 266. Any substantial departure from this rule is sure to produce surprise, confusion and injustice.
>
> " In Romeyn v. Sickles, 108 N. Y. 650, the action was brought to recover on a quantum meruit for work, labor and services by the plaintiff as an architect in preparing plans for a proposed building. The answer set up a special contract in which it was claimed that the work was performed and that the defendant and others were interested in forming a club which was to pay for the plans if the building was erected, otherwise the plaintiff was not to be paid. The plaintiff was awarded judgment by the Referee on a theory not set forth in the complaint. The judgment was reversed by the Court of Appeals. The Chief Justice after quoting from the opinion of the Referee said: ' It is true that upon this view the plaintiff recovered upon a somewhat different cause of action from that stated in the complaint; and this is followed by the suggestion that the pleadings may be amended or deemed amended to conform to the proof. This is to ignore the whole office of a pleading and compel parties to try their cases in the dark, informing them for the first time after the wrong is irremediable of the issue which they should have tried. The pleadings were not amended and they could not lawfully be amended in a material respect except at a time which would give the party against whom the amendment is allowed a right and opportunity to meet by proof the allegations made against him.' "

In Bourke v. Truesdale, 145 N. Y. 612, it was held that where fraud is alleged as the basis of an action it must be proved, a recovery may not be had on proof of a right of action on contract or of some other character, although facts are proved which in a proper form of action would justify the recovery. I cite

a great many other cases to the same effect, including the great case of the People v. Denison, 84 N. Y. 272.

De Gray v. Elmore, 50 N. Y. 1.
Ross v. Malta, 51 N. Y. 108.
Salisbury v. Howe, 87 N. Y. 128.
Dawes v. Quigley, 59 N. Y. 265.
173 N. Y. 599.
Reed v. McConnell, 130 N. Y. 434.
Doyle v. Camer, 190 N. Y. 386.

There an action was brought to recover penalties, it being charged in the complaint that the defendant sold imitation butter. On the trial it was sought to amend the complaint by adding the allegation "as butter," so that the offense was changed from a sale of imitation butter to one which constituted a sale of imitation butter as butter, an entirely different thing. It was held that such an amendment was not permissible.

I might cite a large number of other authorities, all of which are to the effect that even in a civil action, not an action which involves forfeiture of office, which involves a perpetual stigma upon the name of the defendant, a proceeding which involves a forfeiture of the dearest rights that man can have in a free republic, the courts will not permit an amendment which makes a substantial change in a cause of action at a trial.

The testimony of Morgenthau, Peck and Ryan was not received for the purpose of establishing a substantive ground of impeachment, but solely for evidentiary purpose, as bearing on articles 1, 2 and 6. Each of them testified to making payments to the respondent in October, 1912. Under the ruling of the court, that evidence was received, subject to objection, as bearing on the scienter of the respondent. The witnesses then gave the additional testimony which has been recited on the argument. That was allowed on the doctrine of Nowack v. Metropolitan St. Ry. Co., 166 N. Y., as tending to cast doubt on the respondent's position, so far as it related to the charge contained in articles 1, 2 and 6, or any other article as to which evidence was given. The reasoning by which the admission of such testimony has

been justified is that contained in the opinion by Judge Vann, which was quoted by Senator Brackett at page 1631 of his closing argument, which has been read this afternoon by Judge Herrick.

It is merely that such testimony is competent as indicating possibly a consciousness of guilt or of wrongdoing, and in that sense having a bearing upon the credibility of a party who uses the methods referred to, or bearing on the general credit of his case.

It is merely evidentiary; it may or not be persuasive as to the credibility of the respondent or the effectiveness of his defense as to the issues which are on trial. It certainly cannot be the basis of an independent right of recovery in a civil action, or of conviction in a criminal proceeding. Thus, the fact of flight, or an attempt of a prisoner to escape before trial, is receivable as tending to establish the consciousness of guilt, surely not as the basis of a conviction. Thus, if one were charged with larceny, — and that was cited in the opinion of Judge Vann in the Nowack case as the classic illustration for the admissibility of such testimony.

Thus, if one were charged with larceny, and such evidence were admitted, it would not warrant a conviction for any crime other than that of larceny, even though an attempt of a prisoner to escape is in itself an indictable offense.

And so if the charge were perjury, while evidence of the forgery of the prisoner's books might in a possible aspect of the case be admissible, it would not warrant a conviction for forgery, even though the charge of perjury cannot be maintained because the statutory essentials of the crime have not been proven.

So, in the present case, we contend that articles I, II and VI do not present proper grounds for impeachment, because they do not set forth "wilful and corrupt misconduct in office," because they do not refer to official acts, but at most to the acts of a candidate for office, completed nearly two months before the respondent's official term began. While under the reservation of this Court of the decision as to the sufficiency of these charges, until it votes on the question of acquittal or conviction, the evidence now under consideration may have been admissible in its bearing on the charges contained in articles I, II and VI.

If these articles fall because of want of jurisdiction, the evidence given in their support falls with them, and cannot be made the basis of an independent charge; and this is equally true with respect to all the other articles. If there is no evidence to sustain them, all the evidence of impropriety or indiscretion, of other offenses that may be presented, will not afford ground for conviction.

It is shown in 1 Wigmore on Evidence, section 278, that such evidence as that now under discussion is merely collateral and does not establish a substantive crime. It is evidentiary of an existing issue and not creative of a new one. It performs a probative function with respect to an actual charge presented by the pleadings. It does not give rise to independent action, outside and beyond the pleadings.

As illustrative of this idea that this was a collateral matter, let me call your attention to the ruling made by the court at page 1403, I think it was. Your Honors will recollect that one of the last witnesses whom we called was the witness, Hennessy. We tried to show by him various acts of Peck while he was Superintendent of Public Works and a member of the Board of Highway Commissioners, as indicating that he was guilty of acts which would have given him a motive to testify as he did with respect to the respondent. When that evidence was offered it was ruled out, and, in sustaining his ruling, the President said, at page 1402 of the record — first, Mr. Hinman, had said:

> "The evidence we claim will tend to show and will show that Duncan W. Peck had an interest in this proceeding here now, and had a motive for testifying in such a way as would eliminate this respondent from office and stop this investigation.
>
> "The President.— I don't see how you can go into that. That will involve an entirely collateral issue. It seems to me — of course, the court has already announced it is disposed to rule very liberally on both sides as to testimony, but there does seem to be some limit, so the court cannot go beyond that and wholly ignore the rule of the court. If you can show expressions of hostility or personal hostility to the defendant here, that is original evidence, but anything that discredits the witness generally you are confined to getting out of his own mouth."

Therefore, this testimony, bearing upon the credibility and the motive of Peck was ruled out as collateral, because we did not cross examine him upon those points. Therefore, we could not go into affirmative proof upon that point, but, according to our friend's contention, they are now seeking to convert that into a substantive claim against us, a charge that we have been guilty of a crime under section 813, in attempting to incite the witness Peck to commit perjury.

Senator Brown.— What page is that?

Mr. Marshall.— Fourteen hundred and two I read. And yet the Court holds that we cannot go into proof to contradict this man, and to show his motive, and to show that his testimony was false, by circumstantial evidence, because it is collateral, and, therefore, we have our lips sealed, we are precluded from defending ourselves, from going into evidence upon that subject; and our friends here, at the latter end of the day, after the twelfth hour, are privileged to come in here, or seek to come in here for the purpose of converting this case into an entirely different one, and of making a substantive cause for impeachment of a matter as to which his Honor has held, and this Court has sustained the ruling, that is but a collateral question for consideration. Certainly if this is a matter of substantive right, certainly if it is a substantive charge, then it would be most extraordinary if we were tied hand and foot and not permitted to go into proof with regard to a matter which is claimed by our friends to be of the utmost moment. Why, they have gone so far as to say that this is subornation of perjury, a felony which is punishable by one-half of the punishment which is to be accorded to one who has committed the full fledged crime of perjury; and yet they say that this is not changing the cause of action or the nature of the charge set forth in the fourth article.

Counsel's argument confounds his contention, refutes everything that he has said.

Even when properly admitted, it is not conclusive with respect to charges to which it is addressed. That is well shown by Judge Vann in the Nowack case. It is also well expressed in 4 Elliott on Evidence, 2724, where, speaking for illustration with reference to evidence of flight, the author says:

> "Proof of flight does not of itself, apart from the motive, necessarily cause any presumption of guilt, but the motive

may be inferred from circumstances, and flight to avoid arrest, etc., is a circumstance to be considered along with the reason which prompted it, together with the other evidence in the case, and may lead to the inference of guilt."

This is strongly sustained by the following decisions:

Ryan v. People, 79 N. Y. 593.
Hickory v. U. S., 160 U. S. 408.
Alberty v. U. S., 162 U. S. 499.

In the present case it may also be useful in passing to comment on the fact that a different rule of evidence applies to the establishment of a charge of perjury or subornation of perjury, and that contained in section 814 of the Penal Law, for as to the former crimes it has been decided in People v. Evans, 40 N. Y. 1, that it cannot be sustained by the evidence of a single uncorroborated witness.

On the general subject of proof of other offenses even on the subject of scienter, it may be well for this court to ponder the latest decision of the Court of Appeals on that subject.

People v. Peltanza, 207 N. Y. 562, which has been fully referred to in the argument of Judge Herrick. But without prolonging this argument, we contend that to convert testimony received for evidentiary purposes into a substantive charge, and to consider it ground for impeachment, either under the articles as framed by the Assembly or under an amendment presented by this court, would deprive the respondent of due process of law, and would utterly obliterate all the landmarks of the law, a possibility the mere contemplation of which makes one shudder. And I merely ask your Honors, in conclusion, to take the charge as it is set forth in the 4th article of these impeachment articles, as found by the Assembly and as presented at the bar of the Senate and as served upon the respondent, and as to which he was invited to go to trial, with this altered, changed, amended article IV which states an entirely different cause for complaint, the mere putting them in juxtaposition in the deadly parallel column will forever silence any question that might otherwise exist in this case.

Mr. Stanchfield.— The reply which the Board of Managers

will tender by me as their spokesman will necessarily be brief. It may be that we were guilty of a lack of perspicacity in not making a fuller and more complete argument with reference to the sufficiency of Article IV in the impeachment. Our attention, by the peculiar phraseology of the question as submitted last evening, ran rather toward the proposition involved in the suggestion as to whether or no this court possessed the power to amend these articles in any particular.

We were not unmindful, nor unaware of what has been said upon the subject of an amendment of these charges at pages 604 and 605, by the presiding judge, and in order to make more lucid my argument as it continues, I purpose to read what he said at that time and place.

> "The President.— My opinion is that this evidence should be admitted. I agree perfectly with the contention of the counsel for the respondent that there can be no amendment made in an impeachment trial that would bring in a new and different offense because the sole power of impeachment is in the Assembly."

About the middle of page 605 the presiding judge continued.

> "Of course, this is not to be construed with the absolute strictness of an indictment in a criminal case. If I were sitting in the Court of Oyer and Terminer, and that were presented, it would not be allowed. It does not matter particularly who was the owner of the property; but my notion is that articles of impeachment are not to be construed and judged in the same way that you would articles of indictment. They ought, of course, to conform to the requisites of substantial justice."

And it is upon that general principle and in harmony with the view there expressed by the presiding judge of this court, that we have predicated our argument with reference to the right to make the amendment in form and substance, as was suggested during the progress of the discussion this morning.

There are numberless cases that hold, if any citation of authority is asked at our hands, that the number of a section is a matter of the utmost immateriality and inconsequence; it is not of the slightest concern from a judicial point of view if a pleader designate

an indictment as having been found under one section when in fact it was found under some other section. In that regard the sole and only test is whether or not the acts alleged in the charge broadly stated constitute an offense against the law. If they do, it is a matter of inconsequence that the pleader has drafted the instrument under a section erroneously named or numbered. We do not, and I did not in the argument made this morning, intend in any way to concede or admit the insufficiency of article IV. The basis of my argument was that if it appeared to this Court that in any respect or aspect, or from any angle article IV was insufficient, there was lodged in this Court and existed in it the power by any amendment that did not change the nature or the character of the crime, by any amendment that was not substantive in its character, to so amend and so change it.

Let me call your attention to just what the circumstances are under article IV with reference to the witness Peck in the form in which the article now stands.

It does state in terms that the suppression of testimony was to be brought about by fraud and deceit, likewise by threats, menaces and violence. What is a threat? One need not in words express a determination to do a certain thing to another in order that it shall import a threat or a menace. It may be conveyed in manner by atmosphere, by the attitude in which a remark is passed.

Let us locate for the passing moment in the Executive Chamber below, Peck, standing side by side with the respondent and going through the conversation that it is not necessary to repeat in your hearing.

The respondent was the Governor of the State. Mr. Peck was the Superintendent of Public Works. Under paragraph 3 of Article V of the Constitution of this State, this was the relation between this respondent and Peck in that remarkable conversation: "He," that is the Governor, "shall be charged with the execution of certain laws." "He," the Superintendent of Public Works, "may be suspended or removed from office by the Governor whenever in his judgment the public interests shall so require, but in case of the removal of said Superintendent of Public Works from office, the Governor shall file with the Secretary of State a statement of the causes for such removal, and shall report such removal and the causes therefor to the Legislature at its next session."

In other words, the respondent possessed at the time when this conversation took place the absolute, unquestioned, undisputed power of removal, without the preferment of charges, without any opportunity to be heard in his defense, of the Superintendent.

Therefore, it is not a far cry to say, when you view that remarkable conversation in the terse way in which it was related by Mr. Peck, that he felt in every word that passed from the Governor to him there was a threat and there was a menace. Therefore, as is suggested here, when that conversation culminated, "Do as I do," it is not at all strange that Mr. Peck was disturbed.

Therefore I repeat there has been no argument made here, and we don't admit now or confess the insufficiency of Article IV. You are the triers of fact, and I submit to you as a jury might here in an ordinary trial the argument that in that entire interview there are all the outward indicia of a desire on the part of this respondent to coerce, to intimidate, to control and to dominate the will and the word and the oath of the Superintendent of Public Works by any and every means at the power and the disposal of the respondent in this proceeding.

The President.— That is going beyond the question, and rather to the merits of the case. The question is not whether there is enough evidence to bring it in, but the question read is to, if there is substantially in fact any lack of power, not the fact of lack of merit.

Mr. Stanchfield.— The argument I am making, if the Presiding Judge please, is that that language is susceptible of translation into either the word "threat" or the word "menace."

The President.— That is really not the point. Here the question is whether that can be considered as a substantive charge under article 4. It is not whether the evidence is sufficient to sustain it. You can argue, of course, the article is broad enough to include it.

Mr. Stanchfield.— If it be true, as I was contending before this tribunal this morning, that amongst others it ought to be construed to include the witness Peck —

The President.— That is the point.

Mr. Stanchfield.— It is broad enough to include the witness Peck, then I insist as to whether or no article 4 is sufficient I have a right to argue here whether or not the circumstances environing that interview and the conversation that passed constituted within the meaning of the law a threat or a menace.

The President.— I don't think so, Mr. Stanchfield. I think that goes beyond the inquiry.

Mr. Stanchfield.— I, of course, shall accept —

The President.— It seems there is a distinction between the two things. If you urge, and you may urge that under that article you can show that he was affected by some threat or deceit, that is one proposition. The other proposition is that the respondent sought to get Peck to commit perjury. You can argue, of course, that such a proposition would be also included. It is as to that that the inquiry is directed.

Mr. Stanchfield.— The last suggestion from the Presiding Judge is in harmony with the line of argument I was advancing, and I would supplement the suggestion with the statement that in the relations that existed between the two, the one the superior, the other the inferior, that the suggestion conveyed from the superior to the inferior that he commit willful and deliberate perjury carried with it of necessity the meaning and significance to Peck's mind that there was sought to be put upon him the influence and power of removal as embodied in the respondent in this case.

You ought not for a moment to be influenced in your determination upon this question by any reference whatever to a statement by Chief Justice Church upon the trial of the Barnard case.

The question of the right to amend — I am stating this with absolute accuracy — the question of the right to amend was never before that court. The motion upon which the language to which your attention has been called was used was a motion made in behalf of Judge Barnard by Mr. Beach, to the effect that certain portions of an article be stricken out.

And in response to his argument in that behalf the language attributed to Judge Church was used, in other words, that they had no right to entertain such a motion, and as a necessary corollary

they had no right to amend; in other words, our argument runs back to the proposition whether in the amendment we seek not in the nature of an argument, but in the nature of a motion to conform the pleading to the proof, embodies a substantive change in the nature and the character of the offense that is laid at the respondent's door. Judge Herrick in his argument here has not met that question; he has not answered the argument that we tender; he takes the position, and over and over again reads from 813 and says that it relates to a person who attempts to procure another to commit perjury. Well, it does, but that is not all of it. Now, I am going to read again that section:

> "A person who incites or attempts to procure another to commit perjury or to give false testimony as a witness, or to withhold true testimony is guilty of a misdemeanor."

So, section 814:

> "A person who maliciously practices any deceit or fraud, or uses any threat, menace or violence to prevent any person from disclosing facts material to a proceeding."

And I repeat again that it is a super-refined, a mind attuned to an intellectual nicety that can say that those sections relate to different offenses. They both have to do and to deal with the suppression of testimony, with the withholding of true evidence. With one it is the withholding of true testimony. With the other it is to prevent a person from disclosing testimony. They are not independent offenses. They relate to the same kind of an offense.

And when we seek here in a pleading to conform the pleading to the proof that has been introduced, we ask nothing more in the language used in the 196 N. Y., than to amend in regard to inconsequential details.

Now, the impression was conveyed here that the 196 New York was a controlling authority. The indictment was larceny. The facts disclosed embezzlement, and the amendment was to change facts into an allegation to meet the proof. In other words, it was an effort to indict a man for one crime, and try him and convict him for another. I make no such contention here, and even upon that bald amendment Judge Werner and Judge Haight dissented upon the express grounds that in sec-

tion 293 the court had the power to grant that amendment. There were two, including a present sitting member of this court, who dissented not on the case at large, but upon that express proposition that that Code gave the right of amendment. It is not necessary here to discuss the question as to when the testimony given by Mr. Morgenthau occurred. We are interested in this informal inconsequential amendment to reach the evidence of Mr. Peck. It is very true that the Morgenthau episode happened long after these charges were formulated, as Judge Herrick says. That does not alter the fact that the testimony that Mr. Morgenthau gives, like the testimony that Mr. Ryan gives, is corroborated evidence as to the testimony that Mr. Peck gives. In other words, I have not the slightest concern whether you leave in that amendment the name of Mr. Morgenthau. I am simply concerned about the insertion in the amendment as we propose it of the name of Mr. Peck because it came at a period of time that renders it relevant and material. It is upon its face an offense of so much gravity that in the interest of the administration of justice we have the right to appeal to the power of this Court to insert it if there be authority and reason for the proposition.

The substantive offense charged in article IV is not the subornation of perjury so far as the witness Peck is concerned, but it is in the technical language applicable to the statute under which it has been drafted the preventing of the disclosure of testimony by either of the four methods named, either by deceit or by fraud, either by threats or by menace; and Peck is included, as we translate and construe that language under the words "and all others."

Now, we have endeavored here for the benefit not only of this trial, the Board of Managers and the respondent, to secure this amendment in the interest of the administration of justice. If it should be held by this court as a court that the fourth article is insufficient upon its face, if it should be held by a majority of this court that the amendment that we suggest changes the form and the character and the nature of the offense so that we are seeking to charge a new crime, so that it appears that we are endeavoring to have you act as the impeaching power of the State, if all those things are resolved against us upon this line of argument, then the

Board of Managers suggest that the matter ought by this court to be sent back to the Assembly for such other and further action as they may deem appropriate in the premises.

The President.— Gentlemen, the matter before the court is resolved into two questions. Of course, the question whether under the articles of impeachment as they stand now, the conversation to which the witness Peck testifies can be considered as a substantive offense is one that will have to be determined when you finally determine the merits of the case, but there is also here an application to amend the articles and also a request here for the court, to use the expression of the counsel, to send it back to the Assembly or give it notice. That will have to be determined now and before we proceed further in the case.

Senator Brown.— I arise, Mr. President, because there is a feeling on the part of the court that before the matter is decided, there should be an opportunity for private consultation, and I so move.

Motion seconded.

Senator Brackett.— Mr. President, just a moment, if Mr. Stanchfield may say a word before the motion is put.

Mr. Stanchfield.— I would like before that motion is put, if the presiding judge please, to call the attention of the court to two sections of the Code of Criminal Procedure which are analogous to the situation that confronts us here. I read first section 400:

> "If it appear by the testimony that the facts proved constitute a crime of a higher nature than those charged in the indictment, the Court may direct the jury to be discharged and all proceedings on the indictment to be suspended, and may order the defendant to be committed or continued on or admitted to bail to answer any new indictment which may be found against him for the higher offense."

Section 401:

> "If an indictment for the higher crime be dismissed by the Grand Jury or be not found at or before the next term, the Court must again proceed to try the defendant on the original indictment."

Mr. Marshall.— May I ask a question, whether that means that he moved to dismiss article 4 as it is now prepared?

Mr. Stanchfield.— Not to-day.

Mr. Marshall.— I wanted the information on that point.

Mr. Stanchfield.— I trust you got it.

The President.—All those in favor of Senator Brown's motion that the Court proceed to private consultation please say aye. Opposed, no.

Motion carried.

The President.— The Court will be cleared.

The Court thereupon went into executive session.

Judge Hiscock.— Presiding Judge, the question has been asked by the counsel while you were out, whether it was desirable that they should remain within close distance here while we were engaged in these deliberations. Of course none of us felt like answering that question while you were away, although some of us did believe that in view of the lateness of the hour we would probably not get further than the consultation.

The President.— We might make a disposition which you would want to hear at the time. I think it is always prudent for the counsel to be near the Court. At least that was my practice when I was at the bar and the jury were out.

Mr. Herrick.— I suppose there is no use of staying beyond five o'clock.

The President.— It is entirely for you to determine.

Mr. Herrick.— There is no use of our staying beyond five o'clock, is there?

The President.— I suppose not; I should not think so.

The Court thereupon went into private consultation, and emerged therefrom at 5:20 P. M., to meet again Wednesday, October 15, 1913, at 10:30 A. M.

SENATE CHAMBER,

ALBANY, N. Y., *October* 15, 1913.

Pursuant to adjournment the Court convened at 10:30 o'clock A. M.

PRESENT:

Hon. EDGAR M. CULLEN, Presiding Judge,
and
THE JUDGES OF THE COURT OF APPEALS,
and
THE SENATORS OF THE STATE OF NEW YORK.

APPEARANCES:

THE MANAGERS:

Same as heretofore.

Counsel for the Managers:

Same as heretofore.

Counsel for the Respondent:

Same as heretofore.

The President.— Call the roll, Clerk.

The Clerk thereupon called the roll and found that there was a quorum present with the following absentees:

Senator Fitzgerald.

Judge Gray.

The President.— Gentlemen, the Court is still in private consultation.

Mr. Brackett.— May I make a suggestion on an insignificant matter — on the matter of revising. I want to call it to the attention of the Court so in case it wants to take any action it will do so. A stenographic report of necessity is more or less incorrect in some grammatical and verbal details, and I want to merely call it to the attention of the Court so that if it wishes to take any action, that there shall be a committee or a commission or someone in the matter of revising. I know that we on our side in not changing at all the substance of what is said, but to revise for verbal errors, and I don't doubt but that counsel on the other side would wish to do the same thing.

Mr. Herrick.— We acquiesce in that and would like to have it.

The President.— I think that it would be preferable to have it done not only for counsel but for some of the members of the Court. Certainly I prefer to have the minutes revised of my remarks during the course of this trial, and I have not had time to examine into the record.

Mr. Herrick.— I hope you will.

The President.— Now, gentlemen, the Court is still in private consultation.

Mr. Brackett.— My associate asks if this compilation — he says that it has been submitted to the Court — that it should be made a part of the record. I think there is no —

The President.— Can't we have all that done when we get to the close of this trial?

Mr. Brackett.— Yes.

(The Court thereupon went into private consultation.)

At 12:45 P. M. the Court adjourned to reconvene for further private consultation at 2:15 P. M.

AFTERNOON SESSION.

(The Court resumed the Executive Session at 2:15 P. M., and then continued the private consultation until 3 P. M., at which time an open session was had, when the following proceedings were had:)

The President.— Gentlemen, the Court announces that the application to amend the articles of impeachment has been denied, and the Court has decided that Article IV is broad enough to permit consideration of the Peck instance as the basis of a substantive charge.

Now, we will resume, I suppose.

Judge Werner.— I move we now resume our private consultation on the merits of the case.

The President.—All in favor of that will please say aye; opposed no. Carried.

The Court went into private consultation at 3:05 P. M., continuing until 7 P. M., at which time an adjournment was taken until Thursday, October 16, 1913, at 10:15 A. M.

SENATE CHAMBER,

ALBANY, N. Y., *October* 16, 1913.

Pursuant to adjournment the Court convened at 10:15 o'clock A. M.

PRESENT:

Hon. EDGAR M. CULLEN, Presiding Judge,
and
THE JUDGES OF THE COURT OF APPEALS,
and
THE SENATORS OF THE STATE OF NEW YORK.

APPEARANCES:

THE MANAGERS:

Same as heretofore.

Counsel for the Managers:

Same as heretofore.

Counsel for the Respondent:

Same as heretofore.

The President.— Call the roll, Clerk.

The Clerk thereupon called the roll and found that there was a quorum present with the following absentees:

Senator Fitzgerald.
Judge Gray.

The President.— Open Court, Crier.

The Crier.— Hear ye, hear ye, this Court of Impeachment held in and for the State of New York now resumes its session in private consultation.

The President.— Gentlemen, before the Court proceeds to private consultation, the Presiding Judge desires to make this announcement, to correct any misapprehension.

In the Barnard case, the vote was taken in private consultation. It is not the intention of the Court to take the vote in that manner in this case. The vote will be taken in public. What is going on now is simply a private consultation between the members of the Court to formulate their views which will determine their final action. It is simply the same as in every other Court which is composed of more than one person, where the question is of sufficient gravity to consult. This is practically a consultation of the Court that is now going on, the same as it would be if it were a case in the Court of Appeals.

The Court will now resume its private consultation and the floor will be cleared.

(At 10:25 A. M. the Court went into private consultation.)

(At 1:10 P. M. an adjournemnt was taken until 3 P. M.)

AFTERNOON SESSION, 3 P. M.

The Crier.— Judges of the Court of Impeachment.

The President.— Call the roll.

The Clerk thereupon called the roll and found a quorum present with the following absentees:

Senator Fitzgerald.
Judge Gray.

The Crier.— Hear ye, hear ye, this Court of Impeachment held in and for the State of New York now resumes its session from recess.

The President.— The next proceeding in order is the final decision of the Court on the articles presented by the Assembly against the respondent. Under the rules each member is required to rise in his place and give his vote. Preceding that, however, the Clerk reads the article of impeachment. The Clerk will now proceed to read the first article.

The Clerk.—Article 1. That the said William Sulzer, now Governor of the State of New York, then being Governor elect of said State for the term beginning January 1, 1913, he having been elected at the general election held in said State on the 5th day of November, 1912, was required by the statutes of the State then in force to file in the office of the Secretary of State within twenty days after his said election, a statement setting forth all the receipts, expenditures, disbursements and liabilities made, or incurred, by him as a candidate for Governor at said general election at which he was thus elected, which statement the statutes required to include the amount received, the name of the person or committee from whom received, the date of its receipt, the amount of every expenditure or disbursement exceeding five dollars, the name of the person or committee to whom it was made and the date thereof, and all contributions made by him.

That, being thus required to file such statement, on or about the 13th day of November, 1912, the said William Sulzer, unmindful of his duty under said statutes made and filed in the office of the Secretary of State what purported to be a statement made in conformity to the provisions of the statute above set forth, in which statement he stated and set forth as follows, to wit.: That all the moneys received, contributed or expended by said Sulzer, directly or indirectly, by himself or through any other person, as the candidate of the Democratic party for the office of Governor of the State of New York, in connection with the general election held in the State of New York on the 5th day of November, 1912, were receipts from 68 contributors, aggregating five thousand four hundred and sixty ($5,460) dollars, and ten items of expenditure aggregating seven thousand seven hundred twenty-four and nine one-hundredths ($7,724.09) dollars, the detailed items of which were fully set forth in said statements so filed as aforesaid.

That said statement thus made and filed by said William Sulzer as aforesaid was false, and was intended by him to be false and an evasion and violation of the statutes of the State, and the same was made and filed by him wilfully, knowingly and corruptly, it being false in the following particulars among others, to wit:

It did not contain the contributions that had been received by him, and which should have been set forth in said statement, to wit:

Jacob Schiff	$2,500
Abram Elkus	500
William F. McCombs	500
Henry Morgenthau	1,000
Theodore W. Myers	1,000
John Lynn	500
Lyman A. Spaulding	100
Edward F. O'Dwyer	100
John W. Cox	300
The Frank V. Strauss Co	1,000
John T. Dooling	1,000

That in making and filing such false statement, as aforesaid, the said William Sulzer did not act as required by law, but did act in express violation of the statutes, and wrongfully, wilfully and corruptly, and, thereafter, having taken the oath as Governor, and proceeded to perform the duties thereof, the said false statement thus made and filed by him caused great scandal and reproach to the Governor of the State of New York.

The Clerk.— Senator Argetsinger.

The President.— Senator Argetsinger, how say you? Is the respondent guilty or not guilty as charged in the first article of impeachment?

Senator Argetsinger.— I hold that any candidate for the great office of Governor of the State of New York, as a candidate, is morally responsible to a certain number of the electorate thereof, and after he has been elected Governor, he is responsible to the entire electorate thereof. I find that the acts of integrity and immorality are so closely allied in this case, of Mr. Sulzer, before January 1, 1913, with those after January 1, that I am unable to divorce the two.

I therefore vote guilty.

The Clerk.— Judge Bartlett.

The President.— Judge Bartlett, how say you? Is the respondent guilty or not guilty as charged in the first Article of Impeachment?

Judge Bartlett.— On this article I vote not guilty, on the ground that the acts charged therein, although in fact, committed by the respondent, do not constitute a valid cause for impeachment, under the Constitution and Laws of this State. In accordance with the precedents in impeachment cases, I have prepared, in the form of an opinion, a short statement of the reasons for my vote.

These reasons are familiar to all the members of the Court, because they were made acquainted with them in the course of our consultation, and I do not propose to take up the time of the Court now in reading this opinion, but will ask leave to file it with the Clerk, and that it be made a part of the record as explanatory of my vote.

I will only state briefly that my position is that, under the existing Constitution, the power to impeach does not apply to any acts of misconduct committed when the accused person was not in office. I agree that the statute, upon a violation of which this article is based, required the respondent to file a statement of his campaign expenses; but, as I read the Election Law of that statute, either by failing to file the required statement, or by filing a false statement, it does not constitute a crime. The requirement to file such a statement does not apply merely to officers elected, but to all candidates.

In the last election it applied to Mr. Straus, Mr. Hedges and Mr. William Sulzer. It seems to me it is going too far to say that this violation of this statute had any such application or relation to the office of Governor, any such application as will enable us to hold that his misconduct in this respect constituted misconduct in office.

ARTICLE I.

The responsibility which rests upon us is so solemn and the consequences of what we do here to-day are likely to be so influential and far-reaching that I deem it my duty in accordance with the precedents in cases of impeachment to state briefly the reasons which have led me to the conclusions which I have reached.

Upon Article I, I vote not guilty; on the ground that the acts charged therein, although in fact committed by the respondent, do not constitute a valid cause for impeachment under the Constitution and laws of this State.

Prior to 1846 it was perfectly clear that an officer could be impeached only for misconduct in office. The Constitution of 1777 authorized impeachment of civil officers of the state only "for mal and corrupt conduct in their respective offices." The Constitution of 1821 granted to the Assembly "the power of impeaching all civil officers of this state for mal and corrupt conduct in office and for high crimes and misdemeanors." In the Constitution of 1846 the provision relative to the power of impeachment was changed and made more general, so as to read: "The Assembly shall have the power of impeachment by a vote of a majority of all the members elected." This provision was retained without alteration in the present Constitution, adopted in 1894.

The Revised Statutes of 1830 contained the following provision in exact accordance with the particular provision relating to impeachment in the Constitution of 1821: "The Assembly has the power of impeaching all civil officers of this state for mal and corrupt conduct in office and for high crimes and misdemeanors." This law remained upon the statute book unchanged notwithstanding the adoption of the Constitution of 1846 for many years thereafter; and it was followed in 1881 by the enactment of section 12 of the Code of Criminal Procedure, which reads as follows: "The court for the trial of impeachments has power to try impeachments when presented by the Assembly of all civil officers of the state except justices of the peace, justices of justices' courts, police justices and their clerks, for wilful and corrupt misconduct in office."

The change in the Constitution effected in 1846 by granting to the Assembly the power of impeachment in general language without indicating what should constitute valid and sufficient cause for impeachment renders it necessary to inquire what was the purpose of this alteration in the fundamental law. Was it tantamount to a declaration that in the matter of impeachments the common law of England (including that portion thereof ordinarily known as the Law of Parliament) should become and be the law of the State

of New York? Or was it a recognition of the existing provision of the Revised Statutes limiting impeachable acts to misconduct in office, leaving to the Legislature the power to add other causes of impeachment if it saw fit?

Personally I am inclined to think that the latter view is the correct one. But even if the Constitution of 1846 operated as an adoption of the English common law of impeachment so far as that law applies to civil officers, it does not, in my judgment, suffice to render the respondent amenable to this court for acts committed before he became an officer of the state and which had no relation to his office. The statute which the first article charges him with having violated is section 546 of the Election Law contained in what is known as the Corrupt Practices Act. I agree that this section requires candidates to file statements of their campaign receipts; but as I construe the subsequent provisions of the Election Law they do not make it a crime to disregard this requirement or file a false statement. We have, therefore, simply a non-criminal violation of a statutory provision, which provision is not restricted in its operation to officers elect but applies equally to all candidates whether successful or unsuccessful. The obligation to file a truthful statement of campaign receipts was imposed by law upon Oscar S. Straus and Job E. Hedges just as much as upon William Sulzer. Indeed, it was imposed upon the hundreds of other persons who had been candidates for various offices throughout the state at the general election last year. I cannot perceive how a neglect to comply with the statute in this regard can be considered as official neglect in any respect whatever.

One of the highest authorities on American constitutional law, the late John Norton Pomeroy, in discussing the question what are the lawful grounds of impeachment has said: "As the punishment to be inflicted has reference solely to the offender's official position, so the acts for which that punishment was deemed appropriate must have reference directly or inferentially to the offender's official duties and functions." (Pomeroy's Constitutional Law, Bennett's Ed. 601.)

There is no instance on record in this country where an officer has been removed from his office by impeachment for acts done when not in office. It is true that impeachment proceedings have

been held to be maintainable for misconduct committed in a previous term of the same office or a similar office; but this is the limit which finds any justification in the precedents to which we have been referred.

The omission in the present Constitution of any statement of the acts of misconduct which should constitute cause of impeachment manifested an intent on the part of the framers of the Constitution to leave these causes to be ascertained by reference to some other legal authority outside that instrument. I cannot believe that it was intended to leave the definition of impeachable offences wholly to the arbitrary discretion of the Assembly or of the Court for the Trial of Impeachments — in other words that the Assembly possesses an unlimited power of impeachment for any cause it sees fit while the Court of Impeachment may likewise convict and remove for any such cause. We have to go back more than five hundred years in the history of English jurisprudence to find support for this view. In 1388 the House of Lords repudiated the authority of all law whatever concerning impeachments except what it called the Law of Parliament; a phrase for that which Parliament judging *ex post facto* might deem reasonable. "In other words," says Sir James Fitzjames Stephen, "their claim was to be at once accusers, judges and *ex post facto* legislators with regard to the exigency, real or supposed, of the particular case before them." The same high authority declares that this "great evil" was abolished by the statute, 1 Hen. 4, c. 14 which in substance required that impeachments should be tried and determined by the Law of the Realm, i. e. the common law. (1 Stephen Hist. Criminal Law of England, 156.) It is inconceivable that the framers of the New York Constitution of 1846 and 1894 intended to restore in this State a theory of impeachment which was thus abolished by statute in England five hundred years ago.

Rejecting this view as wholly untenable, it follows that the effect of the change in the language of the New York Constitution originally made in 1846 must have been, as I have already suggested, either to leave the power of defining causes of impeachment wholly to the Legislature or to restore in this State the common law of impeachment as it existed in England after the enactment of the statute 1 Hen. 4, c. 14. Whichever of these

alternate views be adopted, either leads to the conclusion, in my judgment, that there is no power to impeach for misconduct on the part of a civil officer committed prior to his entry upon the duties of his office.

The Clerk.— Senator Blauvelt.

The President.— Senator Blauvelt, how say you, is the respondent guilty or not guilty as charged in the first article of impeachment?

Senator Blauvelt.— Mr. President, I have no hesitancy in disagreeing with the conclusion reached by the learned justice who has just preceded me. I have as great respect as he for the traditions and historic precedents of the past, but in times of dire public need those precedents and those traditions must be brushed aside when the public good demands it, provided no inherent constitutional right is invaded. I feel that such an occasion now confronts us.

The respondent has concededly admitted not only a great moral wrong toward the people, but serious statutory offenses as well. Should he escape punishment because those acts intentionally and wrongfully done were committed only a few days before his induction into the highest office within the gift of the people of this State? I think he should not, unless some right which the Constitution of the State accords him is violated. I can find, sir, no constitutional provision which protects him. The Constitution is silent as to what shall constitute impeachable offenses.

In 1881 the Legislature sought to define and limit it to mal and corrupt conduct in office. The Constitution of 1894 disregarded the limitations of 1881 and in my opinion left it to the Assembly and to this Court whether or not offenses committed before a successful candidate took office should be ground for impeachment. Even though the limitations fixed by the Penal Law are included in the statute I don't think they are controlling or binding upon us. The highest Court of this State has repeatedly held that the Legislature cannot enlarge the provisions of the Constitution. That being so, how then can it abridge them?

Having in mind that the dignity of the State may be maintained as much by obedience to statute and moral laws as to the ob-

servance of traditions and precedents, I find the respondent morally unfit to occupy and fill the office of Governor and guilty, sir, of all the acts charged against him in Article 1.

The Clerk.— Senator Boylan.

The President.— Senator, how say you: Is the respondent guilty or not guilty as charged in the 1st article of impeachment?

Senator Boylan.— Mr. President, as a lay member of this Court I have been unable to separate when the acts of a candidate should be dissolved from those of an elective officer. When a man is nominated and receives the designation as choice for a high office or for any office I believe that the acts that he commits during the period of his candidacy are connected with the discharge of the office itself. We have during the past few years not only in this State but in the entire country, amended the Corrupt Practices Act in order that the people not only of this State but of other States where the act is in operation, might know exactly who pays the bills, who finances the expenditures of a campaign.

The respondent took great credit to himself in stating the part that he had taken in the national halls of legislation toward perfecting this act. He also sent a message to the Legislature of this State requesting that it be strengthened. Now, if a man commits misdemeanors while a candidate and if after he is elected he can plead that they were committed while he was a candidate and that he cannot be impeached, what redress have the people?

I believe that the respondent in making his statement was fully aware of the statement. I believe that not only from the position that he took in having it introduced and strengthened, but also as an attorney he knew in making the statement that he violated the law.

I believe, Mr. President, that the respondent is guilty as charged under article 1 of the impeachment articles.

The Clerk.— Senator Brown.

The President.— How say you, Senator, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Brown.— I beg leave to read my opinion.

(Reading):

No one with a just appreciation of the solemn duty now resting on us can approach final judgment in this case without regret; regret for the events that have led to this trial, regret for the revelations of the trial itself, and regret that the duty could not have been performed by another.

Speaking for myself, I would that there was any justifiable ground to have withdrawn from the Court, as I was moved to do, because it had been my duty during the present administration to lead the opposition in the Senate and there have been at times sharp conflict. On more than one occasion I was indignant at the Governor's language and acts, but the Constitution imposes the duty upon the members of this Court without regard to previous bias. If bias were an excuse for withdrawal the Court might not be able to organize by a quorum. Offences for which the Court was summoned might be so public and flagrant that every member of the Court would be prejudiced in advance. This is illustrated in the impeachment of Andrew Johnson and in fact has been illustrated in greater or less degree in all famous impeachment trials.

The Court is organized rather upon the faith of the framers alike of English law and American constitutions and upon the faith of the English-speaking peoples that the highest legislative body in the State can be relied upon not to destroy the Government which, for the time being, they hold in trust.

In this State there are added precautions against hasty or prejudiced action by requiring a two-thirds vote of the Court after its membership has been increased by Judges of the Court of Appeals, but over and above these precautions the Court is organized upon the faith of our fathers that the highest representative body of the State would scorn to be guilty of a breach of trust that would be a blot on the fair name of the State.

The individual might fail, but so long as the State was worthy of preservation, at least one-third of its highest representative body would be obdurate to wrong. What man so petty, be he a member of this Court or not, that he can stand singly in this presence and after taking a solemn oath to do justice and hearing the evidence, vote out of revenge or prejudice or hate? Whom have the people chosen as judges and senators that their individual oaths, the solemn obligations that never leave the minds and hearts of the members, will not guide and control them in the per-

formance of the highest public duty it might ever be the lot of any of us to perform? If there be wavering or doubt in the public mind as to the fairness of this court or any of its members, the doubt can be resolved, not by weakly shirking the duties or by consulting public opinion instead of the evidence, but rather by a faithful discharge of the judicial function, and free ourselves, if need be by extreme effort of all personal consideration. And I wish in this connection to acknowledge the great assistance afforded the members of this court by the searching and masterly analysis of methods and environment by Judge Herrick.

The question at the threshold of the inquiry relates to the power of this court to consider an impeachment for acts done before the respondent was in office. As I read the impeachment provisions of the several constitutions of the State, I am persuaded that the framers of the Constitution of 1846, which contains the impeachment provision now in force, expressly removed the limitation contained in the earlier constitutions, and that then, as now, the sole charge is whether or not the offense is an impeachable one. I should still be unwilling to consider as the ground of impeachment offenses remote in time, or which by fair intendment were passed upon by the electorate that chose the public official. But offenses committed in election to office, whether they be indictable crimes or offenses, or only offenses shocking to the moral sense of the community, are fairly within the terms of the Constitution and which may be in a sense considered as done in office. Every day a public official is in office he holds it by virtue of his election, and if in securing that election he secretly committed crimes or moral offenses, or both those crimes or offenses, he is guilty of official misconduct. Any other rule would imperil the State. A judgment of guilty would not be a precedent for impeachment on the crimes and offenses created in obtaining office. The argument to the contrary leads to an absurd conclusion, namely, the establishment of facts rendering the respondent unfit for office, but retaining him in office for fifteen months. Who can contemplate without the gravest anxiety the position of the commonwealth during that period? What effect will his continuance in office have on the ideals of the community? Think you that the members of our universities, as they recall Sidney and Vane, Roger

Williams and Lord Baltimore, and the students in our public schools, as they ponder on the characters of Washington and Lincoln will be restrained from abhorring a government which is powerless to afford them relief against such a calamity? The answer that the period is brief is fallacious. How many of the youth of the State during such a period can be forever divorced from the public service of a state that keeps at its head during so long a time during the most impressionable period of their lives a Governor both impeached and convicted at the bar of public opinion before this court has had an opportunity to come to judgment, and who dare not, from the weakness of his cause, appear in his own defense?

Although in the 138th year of its existence as an independent commonwealth, this is the first impeachment or attempted impeachment of a Governor. There has never been an indictment of any public official in this State involving the slightest scandal, and yet we are told to beware of a precedent that will permit an abuse of the power of impeachment in the future, though it has never been abused in the State's history, and the Legislature possesses now, as it has long possessed, the absolute power, for any cause and for no cause, of removal on joint resolution of many of the highest officers of the State, including Judges of the Court of Appeals. The fear of these imaginary evils should be transferred to the present calamity.

The proofs of the violations of the corrupt practices act and the Penal Code in the matter of reporting contributions are overwhelming. Sarecky's testimony, instead of answering, confirms this. The omission of brewers' contributions, of Schiff's and Ryan's contributions could not be accidental, and the attempt to shield the respondent by the incredible suggestion of his ignorance of Sarecky's acts, would not, in the respondent's absence from the witness stand, be considered in any issue in any court. The testimony of Morgenthau, Peck and Ryan, stands unchallenged, save by the written answer of the respondent, which contained this sentence:

> "And filing the same, this respondent believed it to be a true and accurate account of the moneys received and paid out for his election expenses."

After the testimony of Morgenthau, Peck and Ryan and Schiff had been received, the counsel for the respondent moved to strike out from its answer the words "received and." The motion was granted, but the record of the false denial remained.

This Court has been so intent upon discovering for the honor of the State a weakness in the case of the Managers, that we have all overlooked the great offense overlooked by the Governor in failing to appear and answer for his own honor and the fair name of the State.

Chief Justice Shaw has said, in Commonwealth v. Webster, when pretty stringent proof of circumstances is produced, tending to support the charge, and it is apparent that the accused is so situated that he could offer evidence of all the facts and circumstances as they existed, and show if such was the truth, that the suspicious circumstances can be accounted for consistently with innocence, and he fails to offer such proof, the natural conclusion is that the proof if produced, instead of repudiating, would tend to sustain the charge.

Under this principle of law, what shall we say upon the facts of this case is the inevitable conclusion arising from the absence of the party from the stand, who is the Governor of the State, who has served for nine terms in the National Congress, was Speaker of the Assembly, and is a lawyer by profession? Mr. President, I feel constrained to vote guilty.

The Clerk.— Senator Bussey.

The President.— Senator, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Bussey.— Mr. President, as a lay member of this Court, I feel that it would be unbecoming in me to occupy the time of the session. In the private sessions which we have been holding, I gave my reasons for voting as I did. I see no reason now to supplement the reasons which I gave at that time. I, therefore, vote guilty.

The Clerk.— Senator Carroll.

The President.— Senator, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Carroll.— Guilty.

The Clerk.— Senator Carswell.

The President.— Senator, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Carswell.— Mr. President, a more elaborate statement of the grounds upon which I place my vote will no doubt be filed by some other member of the Court, and, failing in that, I expect to file a more elaborate statement of my own, but, for the present, I wish to explain my vote in this way:

I have arrived at the conclusion that the correct interpretation of the grant of the power of impeachment now in our Constitution, viewed in the light of its historical development, is one that does not limit impeachable offenses to ones committed in office. And, for that reason, I am constrained to look upon the set of facts which have been conclusively established to my mind, under Article, I, as being an impeachable offense for the reason that I believe that, on authority and on principle, impeachable offenses are, by their very nature, not susceptible of exact definition, and, without viewing those acts in the light of whether or not they constitute a crime, I am satisfied they constitute a moral offense which reaches the dignity of an impeachable offense.

I do this by applying something of a test in my own mind as to whether or not the acts are not too remote from the time of the present inquiry in point of time, and whether or not the acts in their very quality are such as to show moral obliquity. Applying these two tests, I have arrived at the conclusion that the respondent has committed an impeachable offense under Article 1, and therefore I vote Guilty.

The Clerk.— Judge Chase.

The President.— Judge Chase, how do you vote, is the respondent guilty or not guilty as charged in the first article of impeachment?

Judge Chase.— Mr. Presiding Judge, I am of the opinion that the respondent should not be found guilty under this article of impeachment because the acts proven against him occurred prior to the commencement of his term of office. I have no doubt that the respondent is guilty of the immoral acts charged in the first article of impeachment, but I am in great doubt whether in view of the construction placed upon the Constitution of 1846 by the Legislature in enacting the Code of Criminal Procedure in 1881 and thus at least defining the power to impeach under the Constitution, the people intended by their approval of the Constitution of 1894 to grant power to impeach other than for wilful and corrupt misconduct in office.

I am clear, however, that it is unwise for this court to establish by precedent that an officer can be impeached for an offense moral or criminal committed prior to the commencement of the term of office of the person proceeded against. In my opinion if this court of impeachment asserts jurisdiction to try the respondent for offenses committed prior to the commencement of his term of office it necessarily follows that an officer can be impeached and the court can try such officer for any offense committed at any time which in the supreme power of the court it declares impeachable. It is of essential importance that extraordinary power of impeachment should be confined within clearly defined boundaries and not left for determination by the court for the trial of impeachments at a time when each member of the court may be unconsciously or otherwise affected by his desire to accomplish a result in the particular case under consideration. The right to impeach should not be extended beyond the clear authority expressed by the people in their organic law. If the people hereafter want to give to the Assembly power to impeach an officer of the State for any immoral or criminal act committed before his term of office has commenced they can do it as they can in all cases when changes are desired in our organic law by amending its provisions in the manner therein provided.

I concur in the statement of fact and the conclusions of law expressed in the opinion in part read and which will be filed by Judge Bartlett, and in the opinion of Presiding Judge Cullen, which I understand is to be read by him when his vote is taken on the ques-

tion now before us, except that I do not concur in any statement of either to the effect that the Legislature may under our Constitution from time to time either increase or diminish the power of the Assembly to impeach, or that one of the important purposes of the Corrupt Practices Act is not to secure publicity of contributions to candidates to office. For the reasons I have thus briefly stated, I vote on this article not guilty.

The Clerk.— Senator Coats.

The President.— Senator, how say you, is the respondent guilty or not guilty as charged in the first article of impeachment?

Senator Coats.—As I understand the object or objects of the Corrupt Practices Act or Acts of the State, two of the principal ones are to require a candidate for office to file a statement and inform the public as to the means and the methods employed by him in his candidacy and to disclose the sources from which he has received financial assistance so that they may determine, if they see fit, as to whether he enters into the office heart free and honor free to impartially serve the public. In other words, the object of the laws is to require a candidate to reveal certain facts.

The evidence as to article 1 is undisputed, from the last day Governor Sulzer was required to file his statements of receipts and expenditures he has been guilty of concealing facts which the law required him to disclose. That concealment has continued from that day, so I think the question as to whether we can impeach him for acts committed prior to his getting into office does not obtain here. The act of concealment has continued down to date, and during every day he has been in office he has been guilty of concealing from the people of the State the facts which they are entitled to know.

I vote guilty.

The Clerk.— Judge Collin.

The President.— Judge Collin, how say you. Is the respondent guilty or not guilty as charged in the first article of impeachment?

Judge Collin.— Mr. President, I say guilty.

Yesterday I stated to all the members of this Court the reasons why I now so state and vote. Those reasons are familiar to them. Therefore, I don't deem it useful or necessary that I should here restate them, either in whole or in part.

By your leave, Mr. President, under the rule of the Court I will file the statements in writing of those reasons.

I cannot concur in or adopt the conclusion declared in the opinions of Judge Bartlett and Judge Chase. I will not undertake, at this time, to state or analyze the evidence that has been adduced upon this trial. I find that it is clearly proven that the respondent, William Sulzer, as a candidate for election to the office that he holds, appropriated large sums of money for uses and purposes other than those for which they were contributed to him, that he wilfully made a false statement of the sums contributed to him as such candidate and violated the statute of the state, that he made a false oath to that statement and committed moral, if not legal perjury, and that he attempted to suppress testimony. I hold that he lacks personal honor, integrity and regard for the nature and obligations of his oath. Judicial notice may be taken of the facts, for they are matters of common experience and knowledge, that honest and high-minded men in the various departments and institutions of the State and throughout the State will not willingly and frankly associate and confer with him and participate with him fearlessly and with confidence in the affairs of the State. As its Governor he is a menace to its welfare and tranquillity. One of the purposes of the power of impeachment is that an officer so characterized may be removed from the office which he holds.

We are told that we should not execute that purpose in this case because the lack on the part of the respondent of moral and mental characteristics which are essential to the safe and patriotic administration of the affairs of the State has been proven by his acts done before he actually took the office of Governor. We are told that if the legislative assembly may lawfully and validly impeach an officer for acts done before he entered into the office they may, and perhaps will, impeach for sinister, corrupt or political motives and for acts which have no relation to, or connection with, the office or the duties, obligations or responsibilities

of the officer; and that this Court should acquit the respondent upon the accusations of the articles of impeachment which involve acts committed prior to January 1, 1913, and that this Court should establish firmly the precedent that a sustainable impeachment cannot be based upon acts done by a person before he took the office from which his removal is sought.

In support of such conclusions much emphasis and weight is given to the alleged fact that throughout the whole catalogue of impeachments not one has been found for acts committed before the taking of office, or while the accused was not in office. Assuming that this is true, what is its just weight in this case? It is literally true that no articles of impeachment have been presented to an impeachment court in England or in the United States, based upon acts committed before the taking of office, and been held by the court to be invalid or insufficient. There has been no decision or judgment of any impeachment court that an officer may not be impeached for acts done before he actually took his office. A very eminent and modern writer upon the law of impeachment (Prof. Thomas of Arkansas University) said: "It must be shown that some cases occurred in which they were charged with high crimes and misdemeanors not committed in connection with their offices and that Parliament expressly refused to impeach them." The truth undoubtedly is that never before in England or the United States has a state of facts arisen similar or analogous to the facts here. Corrupt practices acts are new and strictly modern. Until a few decades ago the amount of money a candidate or his party received or spent, the sources from which it came, the purposes for which and the intent with which it was contributed were universally deemed of no concern, interest or importance to the State or the citizens. Obvious and dangerous evils springing from the nature of the contributions for campaign purposes, their amounts, purposes and manner of use caused the destruction of this tradition or indifference and a complete change in the attitude of the people, and the provisions of the Election Law and Corrupt Practices Act relating to those matters are the result. The purposes of those provisions are, speaking generally, three: *First,* to prevent actual corruption in elections through the

trafficking in votes and in similar ways; *Second,* to limit the expenditures of candidates themselves in order, among other reasons, that there may not be too great an inequality of opportunity between the candidate having large and those having small means; and *Third,* to secure full and complete publicity of all, actually all the contributions from any source to any recipient for campaign purposes, in order, among other reasons, that all the influences over or upon the candidate elected while he is in office through obligations, gratitude, or profit and personal advantage, and whether or not the contributions in their duplication to the opposing candidates suggested or indicated sinister and malign motives and intent, should be exposed to and discernible by the public. To accomplish these ends it was obviously necessary that the defeated candidate should make the required statements. A contributor to two or more parties or the opposing candidates of two or more parties would remain undisclosed were the statements required of the successful candidate only. Of these three purposes, that which requires full and complete publicity of campaign contributions is probably the most protective of the public good and the most salutary. It tends to guard the candidate against placing himself under influences wholly indifferent to the welfare of the State and selfish or insidious, or to make idle and ineffectual throughout his official term those influences, by exposing them. It is throughout the term of office a shield and a check to official conduct. Its purpose was not to prevent the candidate from misappropriating the contributions. Such purpose did not enter into its origination. The purpose of it was to aid the officer throughout his official tenure in remaining free from, or to strengthen him, through fear of accusation and exposure, against dishonest or unfair conduct in all the matters of administration and legislation. It attaches itself to and is connected with the officer rather than to the candidate or his election and in purpose and effect supplements the oath of office. It had no prototype, it sprang from modern conditions and was new and original in substance and form.

New social and political conditions and tendencies require the new application of old principles or the creation and application of new principles, thereby begetting new precedents. If the per-

manent and the real welfare of society demand new principles and precedents, which the people by their paramount and irrefragable constitution of the State have not forbidden, it is the duty of the Legislature and the Courts to fulfil that demand. If the welfare, prosperity, tranquillity and honor of the State demand the removal of the respondent from his office, the fact that a new precedent is established in doing it, should not make this Court dishonor that demand unless the precedent constitutes an evil and risk greater than that of which we relieve the State. What is the precedent to be by us established? It is, that the Impeachment Court may remove an officer whom it finds unfit to hold and fill the office, as proven by his acts done in the process of securing his office and which acts affect and are connected with his conduct when elected to the office. If the unfitness of the respondent had been proven by acts of the same nature and revealing the same lack of moral sense and character, done after he took his office, the necessity for and justice of his removal would be manifest. Wherein lies in this precedent any hazard or danger to the State? Wherein lies the danger of injustice to the accused? There has been revealed to me no true, reasonable or rational ground for concluding or fearing that any danger lurks in the precedent that the present unfitness of an officer may be proven by his acts connected with and relating to his office and affecting and influencing his official conduct, although they antedate the actual taking of the office. To hold that he is now unfit to hold the office and cannot be removed because the proof of his unfitness arose before he took office, is a lamentably inadequate and impotent conclusion. And what of that conclusion as a precedent? Is it not dangerous that this Court should itself create a limitation upon itself, prohibiting it from protecting the State and punishing the guilty because a like or analogous state of facts has never before been presented to an Impeachment Court. Such a precedent does not promote or sanction justice, security or right. It makes form superior to substance and that which is incidental dominant over that which is vital.

A few words as to the argument that the proof of grounds for removal by acts done before the office is assumed would permit the

legislative Assembly to impeach an officer for insignificant and foolish causes through sinister motives. If the time ever comes when the people of this state ever elect a legislative assembly which will do that, the state will be past all succor and no precedent or lack of precedent will redeem it from its sluggish decrepitude. Extreme or well-nigh impossible cases do not point the way to wisdom. They in their application would make nearly every principle upon which we live inactive. In deliberating and determining it is wise and safe to consider that which may reasonably be apprehended or anticipated and not that which is unique, unreasonable and unprecedented. Acting upon this rule it is unthinkable that the people of this state will elect a legislative assembly, two-thirds of the members of which would be so devoid of good sense, the instinct of self-preservation, patriotism and honesty, that they would impeach any officer for any such extreme and preposterous charges as has been mentioned in the arguments and briefs of the respondent's counsel. Moreover, the danger of unfounded and wicked impeachment through political or evil motives is not substantially or materially lessened or touched by the precedent or rule that the acts charged must have been done after taking office. The man after taking his office will still have political and religious views, the color of his hair will remain the same, he will continue to wear garments — in fine, any foolish or preposterous charge based upon acts which he did before he took the office, may be based upon the same acts or others equally foolish or preposterous done after he takes the office. The argument that the creation of the precedent that present unfitness for the office may not be proven by acts done before the taking of it, will destroy or diminish the power of the Assembly to impeach for political or insidious purposes, for acts foolish, weightless and having no relation to the office, has no solid or real foundation. If a legislative assembly ever exists which is so foolish, imbecile and despicable, it will find a plenty of acts done after the office is assumed, fit for its purpose.

Under the Constitution it rests with this court alone to say what are impeachable acts. The Constitution has given this court that power in broad and unrestricted language. It has not given the Legislature the right to restrict or condition that power. This

court must act according to the common law and parliamentary practice, but we are the sole judges as to the meaning of the Constitution and as to the impeachability of any accusation. If the Legislature has ever attempted to place any restriction upon the jurisdiction and power of this court in such regard, we may hold that its enactment was void and as void and effectless for all purposes as though it had never been made. I believe that the Legislature never did and never intended to legislate in regard to the jurisdiction or power of this court. It may be that in section 12 of the Code of Criminal Procedure (adopted in 1881), it adopted the interpretation or construction given to the provision of the Constitution of 1846, by the men who in 1849 or 1853 chose the language of that section. Assuming that the Legislature did adopt the views of those men as to the meaning of the Constitution we must remember that we alone have the power to determine that meaning. Two facts guide me to the conclusion that if we hold that the acts done by the respondent before January 1, 1913, are competent to prove his present unfitness for the office he holds, we will act in perfect accord with the language, spirit and intent of the constitutional provision. The first fact is the elimination by the Constitutions of 1846 and 1894 of the limitations upon impeachable offenses in the Constitutions of 1777 and 1821. The power to impeach for mal and corrupt conduct in office as given in the Constitution of 1777 and for mal and corrupt conduct in office and for high crimes and misdemeanors as given in the Constitution of 1846 has become and is in the Constitutions of 1846 and 1894, the discretionary power to impeach.

The second fact is, that the Constitution of 1894 was adopted after this Court, the highest Court in this State, had rendered judgment that Judge Barnard might be and was convicted for acts done before he assumed the office from which his removal was sought, the acts having been done during a previous term of that office. The reasoning and argument which supported and brought about that decision support the conclusion I have adopted. Indeed, if the mere fact of being "in office" at the time when the acts were committed is material, the respondent here was in the office of Representative in Congress until late in December, 1912.

With the decision in the Barnard case existing and unaffected by no later judgment, the Constitution of 1894 used the language of the Constitution of 1846 under which Judge Barnard was impeached and tried. It is an established rule of law that where the language of a statute or a Constitution, which has been given a meaning by a judicial construction, has been used by a legislative or constitution-making body in the amendment or revision of the statute or Constitution the meaning given to it by the judicial construction is that which that body intended it should have.

I vote guilty.

The Clerk.— Judge Cuddeback.

The President.— Judge Cuddeback, how say you, is the respondent guilty or not guilty as charged in the first article of impeachment?

Judge Cuddeback.— Mr. Presiding Officer, I, like Judge Collin, stated yesterday my views upon this question. I am not going to restate them now. I have prepared a brief resume of what I said, which I propose to file with the stenographer. The substance is about this:

I agree with the gentlemen who say that a man should not be impeached, a public officer should not be impeached for acts committed prior to the term of his office, unless the act is committed after the people have passed upon the offences of the candidate; that is, after the election, and unless the act committed affects the officer in the discharge of his official duty when his term does commence.

I say that the violation of the Corrupt Practices Act proved beyond dispute, under the charge in the first article of impeachment, does reach into and affect the officer after he takes his office in the discharge of his duty. The people have the right to know what influences are being brought to bear upon an officer after his election. They have the right to know who put him there, who will control him there, or who will at least exercise influence over him there, and to that end they have passed this statute, and I say it is not within the precedents — the violation of that statute is not within the precedents which have laid down the

rule that an officer shall not be impeached for anything done before his term begins; and, therefore, I vote guilty, and I give this to the stenographer:

Article I charges that the respondent prior to his election received large sums of money for his campaign expenses, which he failed to include in his statement filed with the Secretary of State after election as required by section 546 of the Election Law. The facts regarding the contribution and the failure to report them are undisputed, but the offense, if any, was committed before the respondent assumed office, and the objection is made that the offense therefore does not afford sufficient ground for impeachment.

Section 13, Article 6 of the Constitution confers upon the Assembly the power of impeachment without defining in any way the ground upon which an officer may be impeached. Turning from the Constitution to the statutes we find that section 12 of the Code of Criminal Procedure prescribes wilful and corrupt misconduct in office as the ground of impeachment and prescribes nothing more. The question, therefore, arises whether the Code of Criminal Procedure limits the jurisdiction of this Court of Impeachment to acts done by the officer proceeded against during the continuance of his term. To my mind it does not. It was beyond the power of the Legislature to thus limit the court, because if the Legislature can limit the jurisdiction in one respect it can limit the jurisdiction in all respects. The Legislature can prescribe that only conviction of a felony shall be ground for impeachment, or on the other hand, that any peccadillo on the part of the officer will suffice. Nor do I think it makes any difference that the statute was in existence when the Constitution was last amended. The constitutional convention did not go over the statutes and mention those contrary to its provisions.

But it does not follow as argued in behalf of the respondent that this Court of Impeachment is beyond or above the law and has no rules for its guidance if section 12 of the Code of Criminal Procedure is not binding upon it. The Court is bound by the precedents created in England whence we take the remedy by impeachment and created also in the different states of the

Union and by the Federal Court of Impeachment. These precedents are binding unless this Court reaches the conclusion that the cases in which they arose were improperly decided. The situation is the same as that which existed in this State before the adoption of our criminal codes. Prior to that time the great body of the criminal law rested upon precedents, that is, decisions previously made and known as the common law.

The force of precedents in courts following the English system of jurisprudence is almost as great as the force of statutory law. It is upon the force of precedents that the counsel for the respondent base what is to me their strongest argument, namely, that an officer should not be impeached for acts done as a private citizen prior to the time of his assuming office for the reason that it has never been done before.

But it has seemed to me that this is an exceptional case for which there is no controlling precedent. The Corrupt Practices Act touches matters connected with the election so closely that its violation by a successful candidate presents a case different from any that has arisen before. The candidate who disregards this act shows an unfitness for office not shown by the commission of any other crime. The case certainly is not within the reason given for refusing to impeach an officer on account of offenses committed before he took office. The electors have not condoned it, and the offense has some relation to the office.

The people have the right to know who have contributed to bring about the officer's election in order that they may know who will exercise control over him, or will influence him, in the discharge of his duties. To that end the law requires the candidate to file a statement of the moneys received by him for campaign purposes.

This is a purpose sought beyond the general purpose which the lawmakers had in view when they required all candidates successful or defeated to make return of their campaign receipts and disbursements. The statement from the defeated candidates will show who is contributing money to elections. The statement from the successful candidate will show further to what influences men in office are subject.

Therefore it is that the case is exceptional and not within the principle of former decisions.

These briefly stated, are my views on the question and they lead me to vote guilty.

The Clerk.— Judge Cullen, President.

The President.— I have prepared an opinion which I am sorry to say is at some considerable length on the questions involved in this issue that we are now disposing of. It is not my purpose to read all of it, but some part of it I think it is proper I should read on this occasion. Other parts of it I shall merely abbreviate by stating the conclusions which I have reached.

The first article of impeachment, and the second article of impeachment, and the sixth article of impeachment are intimately connected, and in the opinion which I have written they are treated together, and possibly it will be more convenient for me to treat them so now. It will avoid repetition when the vote is taken on the other two articles which I have named.

First, as to the facts, I regret to say that I am constrained to find the facts as follows:

I find that the respondent did take advantage of his nomination and candidacy for office to seek to personally enrich himself by diverting the contributions which he might receive for campaign purposes.

I find that he did verify that by his oath, knowing it to be false. At the same time, I shall vote not guilty of these articles, for reasons which seem to me to dictate such a course, whatever may be my personal opinion of the acts done and committed by this respondent.

First, a moment as to the character of the acts. The use of this money for his own purposes other than political work was not an offense. On the contrary, it is very doubtful whether it was not within his legal right to use it for any purpose for which he saw fit. I have pleaded that at length in my opinion. I have given the authorities which assert the proposition.

As to his filing a false certificate, in my opinion, it is matter of law that the Corrupt Practices Act, now a part of the Election Law, did require him to state the amounts and sources of all election contributions, and in my judgment, nearly all, possibly with two or three exceptions, of the moneys paid to him were such contributions.

I find, however, this: That his oath to the truth of this statement was extra-judicial, so far as it related to his receipts. The Election Law does not require a verified statement, while the Penal Law, which does require a verified statement does require that that statement should contain the receipts of the party making the statement.

It, therefore, is plainly extra-judicial to the oath, and it is elementary law. However, he was not guilty of legal perjury. So much for that. But I am frank to say that if those acts had been committed during his incumbency in office I should have regarded his moral offense great enough to require his removal. But I am of opinion that it cannot be considered as ground for impeachment, and that it would be an eminently dangerous doctrine to treat them as such.

The question, however, whether these acts of the respondent constituted crimes is not decisive of the issue before us. They displayed such turpitude and delinquency that, if they had been committed during the respondent's incumbency of office, I think they would require his removal.

This brings me to what I consider the serious question in the case: Can a public officer be impeached for acts committed when he was not an officer of this State? The question is not one of power, but one of right. Doubtless, if the Assembly impeaches and the court convicts and removes from office, that judgment cannot be attacked, no matter what the reasons assigned for the removal may be, but the questions remain: Are such acts rightly ground for impeachment? Should this court so decide?

Never before the present case has it been attempted to impeach a public officer for acts committed when he was not an officer of the State. No suggestion to that effect can be found in any opinion of Courts of Impeachment, in the arguments of counsel on such trials, or in the text writers. In several cases where it has been sought to remove the officers for such acts by judicial proceedings, the right has been expressly denied.

In the year 1853, the Judiciary Committee of the Assembly of this State reported that no person can be impeached who was not at the time of the commission of the alleged offences, and at the time of the impeachment holding some office under the laws of this State.

In 1905 the Assembly Committee reported that Justice Warren B. Hooker was not subject to impeachment, because the acts did not constitute wilful and corrupt misconduct in office, but that the Justice was subject to removal under the provisions of section 11 of article 6 of the Constitution, which authorizes Judges — mark Judges alone — Judges to be removed by the joint action of two thirds of both houses of the Legislature.

In this view, apparently, though not in express terms, the Judiciary Committee of the Senate concur and the Justice was proceeded against but not by impeachment.

It is contended, however, that by the change made in the phraseology of the Constitution of 1846 from that of the preceding Constitution, a Court of Impeachment has been granted the right to remove a public officer on any ground that it may deem sufficient to disqualify. It seems to me it would be most unfortunate if such a doctrine were to prevail. The condition would be then that characterized by Judge Storey as "truly alarming."

I shall not now read the argument by which I seek to establish that the true interpretation of the Constitution confers no such power. The only precedent cited by the learned Managers for the Assembly to support their claim is the impeachment of Judge Barnard in 1872. Some of the offenses charged had been committed in a previous term. The contention of the respondent in that case was that he was not liable to impeachment during one term for acts done in a previous term. This was overruled, and probably the weight of precedent throughout the country is in accord with that decision. I am at a loss, however, to see how that is an authority for the proposition that an officer can be impeached for acts done when he was not in office at all. In fact, the two cases in which that ruling has been followed, that is, the case in Nebraska, the impeachment of Governor Butler, and in Wisconsin, the impeachment of Judge Hubbel, the Constitution expressly limited the power to impeach to misconduct in office. Therefore, in those cases it must have been decided that liability for offenses during a previous term, and liability for offenses when not in office, were entirely distinct propositions.

It is urged that the offenses charged against the respondent were part of the means by which he obtained his office, and therefore it is sought to distinguish them from other offenses. A slight refer-

ence will show that this argument cannot be sustained. The respondent's dishonesty in diverting the money contributed to him could, in no way, help him to get the office. On the contrary, this failure to properly expend the money had, if any effect, a reverse one. The falsification of the statement filed by him could have no effect on his election, because that had already occurred, though doubtless the public was properly interested in knowing what had been contributed and in what amounts. The statement was not required of all persons elected to office, but of all those who had been candidates for office, and on elected and on defeated was equally imposed the duty of making the statement. The falsification was made by the respondent, not for any matter connected with his election, but to conceal the misappropriation of the money. The statute is directed solely to securing purity of politics and enacted for that purpose. The suggestion that it was intended also to insure publicity of the names of those who had assisted the successful candidate so that people might judge of his subsequent conduct in office, and might know whether it was dictated by subservience to persons or interests who had contributed, I think unsound. A statute enacted for that would be, to say the least, of doubtful constitutionality.

The Constitution prescribes the oath of office to be taken by all public officers, and then enacts: and no other oath, declaration or test shall be required as the qualification for any office of public trust. A statute prescribing that any one elected to office should say by whom and to what extent others had aided him as a condition of entry upon his office might well be deemed in conflict with this constitutional provision. Reference was made there to a decision made by the Supreme Court. Will it be asserted that a law would or could require an officer, as a condition of his entry upon office to declare under oath all his dealings during the past, or the property that he may own at the time in specific detail so that the people might judge how far personal interests affected his official actions. The assertion is erroneous that impeachment proceedings are in no respect punitive and solely preventive to safeguard the State. If the doctrine contended for is correct, a man guilty of any offence in his past life of sufficient gravity to justify his removal if committed when in office, may be removed from office without an

opportunity to show that both his official conduct and private life during his official term have been of the most exemplary character. There is no statute of limitations on impeachment. The rule here contended for amounts in reality to an ex post facto disqualification from office for an offense which had no such penalty when committed, without affording an opportunity for showing either repentance or atonement. Men have committed serious crimes, even felonies, and subsequently attained high public position. Instances will occur to all of us. If the Legislature may define the grounds of impeachment — and I am not prepared to deny or affirm that proposition, being impressed by the argument of Judge Vann to that effect—it may prescribe for what offences committed prior to the commencement of his term a candidate—during what period an officer is subject to impeachment. With such legislation an official tenure of office would be safeguarded by law and not dependent on the conflicting views of the various tribunals as to what renders a person unfit for office. For, unless the man is disqualified by law his fitness for office is to be determined solely by the electors. That is their right. The matter is of particular importance in this State because under the Constitution the mere presentation of articles of impeachment against a Governor or a Judge suspends him from the powers and duties of his office. The very fact that we all agree that an officer may be impeached for offenses not amounting to crime so long as it absolutely unfits him on his entry into office makes it true, otherwise one who never violated any law may be removed because as a citizen he failed to conform to our ethical standards. When he enters upon office his conduct is necessarily subject to other restrictions.

This leaves for consideration the first, second and sixth articles. It would be a matter of great satisfaction if I could deal with these as I have with the other articles, finding that the evidence did not establish wrongdoing on the part of the respondent, thus rendering it unnecessary to consider the law of the case. But I cannot. The facts and the law are inextricably blended. The vote is guilty or not guilty. One may find all the facts alleged in an article to be true, including even the intent of the respondent and yet be constrained to vote not guilty if he believes that under the law the respondent cannot be impeached therefor. These

three articles relate to the same subject-matter, though to two separate branches. The sixth article charges the respondent after his nomination for Governor by the Democratic party with having received moneys from a number of persons whose names are specified, as contributions to aid in his election for said office, and thereafter failing to apply the same to the purposes for which he had received them, but converting them to his own use in stock speculations, and that he thereby committed the offence of larceny. I find the facts charged as I have stated them to be true. It is impossible on the evidence before us to doubt that the respondent took advantage of his nomination to obtain large sums of money to aid him in defraying his legitimate expenses in seeking election with the intention not to apply them to that purpose, but to retain them for his permanent enrichment. It must be borne in mind that some of the largest sums were given only on the respondent's personal application and immediately applied to a purpose wholly foreign to that which induced the gift.

The first article charged that the statement made and filed in the Secretary of State's office in compliance with section 546 of the Election Law was false, and that it was made by him wilfully and knowing that it was false in that it did not contain a number of contributions specified in the article. I find the facts charged in this article to be true. The sum actually received by him was so grossly in excess of that which he stated he had received that the error could not have occurred through inadvertence or mistake. The evidence of Sarecky, if believed, would not relieve him. By far the greater amount of the money contributed was received by him personally. He never informed Sarecky of its receipt and he knew therefore that it was impossible for Sarecky to make a true statement. It is needless to refer to the other facts. The conclusion is irresistible that the respondent purposely omitted from his statement these contributions in order to prevent the exposure of his diversion of the contributions from the purposes for which they were intended.

The second article charges the respondent with perjury in swearing that the statement filed by him was true when he knew it was false in the particulars set forth. I find that the facts alleged in this article are also true. While I am of the opinion

that these acts, because committed before the respondent was a public officer, cannot be regarded as a ground of impeachment for the reasons hereafter stated, other members of the court may entertain a different view, and it is therefore proper for me to here express my view of the legal character of those acts.

The appropriation by respondent of the campaign contributions to the use to which he put them cannot be larceny. The moneys were given him to defray the expenditures he might incur in the prosecution of his efforts for election. He was the beneficiary. The respondent could not have been a trustee, for one cannot be a trustee for his own benefit. The case is not at all analagous to that of money given to a committee for some charitable or political purpose. If a master gives his money to a clerk to defray his expenses on a trip in the service of the master, a fraudulent conversion of that money would constitute larceny, but if the money was given to a clerk for a trip for recreation or the recovery of health, there is authority to the effect that legally he may use it for any purpose. (Jarman on Wills, p. 397; 2 Williams on Executors, p. 1397.) Mr. Williams says, if money is given to a legatee to enable him "to take holy orders * * * the legatees will be entitled to receive the capital money immediately, regardless of the particular modes directed for the enjoyment or application." Mr. Jarman goes further and says that if a legacy be given solely for the benefit of the donee, he may claim the money without agreeing to apply it to the specific purpose, even in spite of an express declaration of the testator that he shall not be permitted to receive the money. If the contributions are to be construed as conditional gifts there would be only a right of reversion in the donor for failure to comply with the condition, a right which in law is a mere possibility, and the title of the donee, unless the donor elected to claim a forfeiture, would be perfect.

Nor can it be successfully contended that the respondent was guilty of larceny in obtaining money under false pretenses. There is no proof that the respondent made any pretenses. In some cases silence, when there is a duty to speak, may constitute a fraud for which relief can be had in a civil action. This doctrine has no application to a criminal prosecution. The law has

been so settled in this State from the earliest time to the present. In People v. Blanchard (90 N. Y. 314), it was held that an indictment for false pretenses may not be founded on the assertion of an existing intention. It must be a false representation as to an existing fact. Ranney v. People (22 N. Y. 413), is to the same effect, that a promise made with no intention of keeping it is not indictable.

It is equally clear that legal perjury cannot be predicated on falsely swearing to a matter that is not material. This is elementary law. (People ex rel. Hegeman v. Corrigan, 195 N. Y. 1.) Section 546 of the Election Law does require, as I construe it, that the statement filed by the candidate should set forth the contributions received by him, and in my opinion all the contributions proved to have been made to the respondent, except possibly one or two, fall within the class and character of contributions embraced within the statute. But the Election Law does not provide that the statement filed in pursuance of it shall be verified, and no practice in the Secretary of State's office — while it might be of efficacy in the construction of a statute when doubtful — can enact or create a crime not prescribed by law. The Penal Law (section 776) does require a verified statement, but the statement so required need not state the contributions received by a candidate. The oath taken by respondent was, therefore, extrajudicial, so far as it related to his receipts, though his moral guilt remains the same.

The question, however, whether these acts of the respondent constituted crimes is not decisive of the issue before us. They displayed such moral turpitude and delinquency that if they had been committed during the respondent's incumbency of office I think they would require his removal. This brings me to what I regard as the only serious question in the case.

Can a public officer be impeached for acts committed when he was not an officer of the State? The question before us is not one of power, but one of right. Doubtless, if the Assembly impeaches and the court convicts and removes from office, that judgment cannot be attacked, no matter what the causes assigned for the judgment may be. But the questions remain: Are such acts rightly grounds for impeachment? Should this court so decide? Never before the

present case has it been attempted to impeach a public officer for acts committed while he was not an officer of the State. No suggestion to that effect can be found in any opinion of Courts of Impeachment, in the arguments of counsel on such trials or in the text writers. In several cases wherein it has been sought to remove officers for such acts by judicial proceedings (not, however, impeachment trials), the right has been expressly denied. In the year 1853 the Judiciary Committee of the Assembly of this State reported "First, that no person can be impeached who is not at the time of the commission of the alleged offence and at the time of the impeachment holding some office under the laws of this State." In 1905 the Assembly Committee reported that Justice Warren B. Hooker was not subject to impeachment because the acts did not constitute wilful and corrupt misconduct in office, but that the Justice was subject to removal under the provisions of section 11 of article 6 of the Constitution, which authorizes judges to be removed by the joint action of two-thirds of both houses of the Legislature. In this view apparently, though not in express terms, the Judiciary Committee of the Assembly concurred, and the Justice was proceeded against by address and not by impeachment. It is contended, however, that by the change made in the phraseology of the Constitution of 1846 from that of the preceding Constitution, a court of impeachment has been granted the right to remove a public officer on any ground that it may deem sufficient to disqualify. It seems to me it would be most unfortunate if such a doctrine were to prevail. The condition would then be that characterized by Judge Story as truly alarming. But I think the argument drawn from the change of the Constitution is unfounded. Before the Constitution of 1846 the provisions of the Revised Statutes stated the grounds of impeachment. Shortly after the adoption of that Constitution commissions were appointed to codify various branches of the law which made their reports to the Legislature. One of those reports, made in January, 1849, recommended the Code of Criminal Procedure, which was not enacted as a law, however, until 1881. That report contained the provision now found in the statute as section 12, which defines the jurisdiction of courts for the trial of impeachments as applicable to cases of wilful and cor-

rupt misconduct in office. One of the members of that commission, Arphaxed Loomis, was also a member of the Constitutional Convention of 1846. The section was not reproduced from previous legislation inadvertently or without thought. On the contrary, the commissioners, in their report, called attention to the fact that the then present Constitution did not define the powers of the Court of Impeachment. Of course, neither the action of the commission nor the subsequent action of the Legislature could impair the powers conferred upon the Assembly and Court of Impeachment by the Constitution. But they constitute strong and contemporaneous evidence of the interpretation to be placed on the Constitution. This is further emphasized by the action of the constitutional convention of 1894. At that time this provision prescribing the jurisdiction of the Court of Impeachment had been on the statute book for over thirteen years. No attempt was made to vary or alter the language of the Constitution; no suggestion was made that the legislation was invalid. From this recital it would seem reasonably clear that either the jurisdiction of the court was the subject of legislative regulation or that the existing regulation had properly construed and given effect to the constitutional intention, for constitutions are assumed to be made with recognition of existing statute law. (People v. Roberts, 148 N. Y. 360.) The only precedent cited by the learned Managers for the Assembly to support their claim is the impeachment of Judge Barnard in 1872. Some of the offences charged had been committed in a previous term. The contention of the respondent in that case, that he was not liable to impeachment during one term for acts done in the previous one, was overruled, and, probably, the weight of precedent throughout the country is in accord with that decision. I am at a loss to see how that is an authority for the proposition that an officer can be impeached for acts done when he was not in office at all. In fact, in the cases (Nebraska: Impeachment of Governor Butler; Wisconsin: Impeachment of Judge Hubbell) in which that ruling has been followed the constitution expressly limits impeachment to misconduct in office. Therefore, in those cases it must have been decided that liability for offences during a previous term and liability for offences when not in office were

entirely distinct propositions. It is urged that the offences charged against the respondent were part of the means by which he obtained his office and, therefore, it is sought to distinguish them from other offences. A little reflection will show that this argument cannot be sustained. The respondent's dishonesty in diverting the money contributed to him could in no way help him to get the office. On the contrary, his failure to properly expend it would have, if any, a reverse effect. The falsification of the statement filed by him could have no effect on his election because it had already occurred, though doubtless the public was properly interested in knowing who had contributed and in what amounts. The statement was not required of all persons elected to office, but of all those who had been candidates for office, and on elected and on defeated was equally imposed the duty of making the statement. The falsification was made by the respondent not for any matter connected with his election, but to conceal the misappropriation of money.

The statute is directed solely to securing purity of elections, and enacted for that purpose is valid. The suggestion is made that it was intended also to insure publicity of the names of those who had assisted the successful candidate so that the people might judge of his subsequent conduct in office and know whether it was dictated by subservience to persons or interests who had contributed aid. A statute enacted to accomplish that object would, to say the least, be of very doubtful constitutionality. The Constitution prescribes the oath to be taken by all public officers and then enacts "And no other oath, declaration or test shall be required as a qualification for any office of public trust." A statute prescribing that any one elected to office should state to whom and to what extent others had aided him as a condition of entry upon his office might well be deemed in conflict with the constitutional provision. (See Bishop v. Palen, 74 Hun, 289.) Will it be asserted that a law could or should require an officer, as a condition of his entry upon office, to declare under oath all his dealings during the past years, the property he owned at the time in specific detail so that the people may judge how far personal interests affect his official conduct.

Doubtless, a public officer may be removed for misconduct in

office, even though that misconduct does not relate to the administration of his office. It is still accurately described as misconduct in office. As has been often expressed, the object of impeachment is to remove a corrupt and unworthy officer. But a corrupt and unworthy officer is an entirely different thing from an officer who has, before his office, been unworthy or corrupt. A master may discharge his servant, even though his term is unexpired, for improper conduct in his service, but not for improper conduct before he entered service. The assertion is erroneous that impeachment proceedings are in no respect punitive but solely preventive or to safeguard the State. If the doctrine contended for is correct a man guilty of any offence in his past life of sufficient gravity to justify his removal, if committed when in office, may be removed from office without the opportunity to show that both his official conduct and private life during his official term had been of the most exemplary character. There is no statute of limitations on impeachments. The rule here contended for amounts in reality to an *ex post facto* disqualification from office for an offence which had no such penalty when committed, without affording opportunity for showing repentance or atonement. Men have committed serious crimes, even felonies, and subsequently attained high public position. Instances will occur to all of us.

If we assume that falsifying the certificate was technically a crime, which may be doubted, the sole penalty for it was fine and imprisonment not to exceed a year. Neither disqualification nor forfeiture of office was prescribed as the result of a conviction. This differs from a felony, on conviction for which a person, if sentenced to state's prison forfeits all office. It is entirely within the power of the Legislature to enact that on conviction of a failure to file the prescribed statement, or of filing a false one, the offender shall forfeit any office to which he may have been elected. A similar provision was enacted nearly a century ago and it still remains in our penal law. Section 732 provides that on conviction for fighting a duel the offender shall be rendered incapable of holding or being elected or appointed to any office or place of trust or emolument within the State. The validity of this provision was adjudged also nearly a century ago (People v. Barker, 3 Cow. 686), and has never since been challenged.

If the Legislature may define the grounds of impeachment — a proposition I am not prepared to deny, being very much impressed by the argument of Judge Vann to that effect — it may prescribe for what offences committed prior to the commencement of his term, and committed during what period, an officer is subject to impeachment. With such legislation an official's tenure of office would be safeguarded by law and not dependent on the conflicting views of varying tribunals as to what renders a person "unfit for office," for unless the man is disqualified by law his fitness for office is to be determined solely by the electors. That is their right. The matter is of particular importance in this State, because, under the Constitution the mere presentation of Articles of Impeachment against a governor or a judge suspends him from the powers and duties of his office. The very fact that we all agree that an officer may be impeached for offenses not amounting to crime makes it absolutely necessary that we should not go back of his entry into office. Otherwise, one who has never violated any law may be removed because as a citizen he has failed to conform to our ethical standards. When he enters office his conduct is necessarily subject to other and greater limitations.

I vote not guilty.

The Clerk.— Senator Cullen.

The President.— Senator, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Cullen.— Mr. Presiding Officer, I find the respondent guilty under the first article of impeachment.

The Clerk.— Senator Duhamel.

The President.— Senator, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Duhamel.— Mr. President, while I may file a statement of my position at some future day, I vote not guilty.

I hold the respondent not guilty for reasons so elaborately argued that an offense, if any, committed before taking office does not apply while holding office.

Secondly, that respondent attempted to comply with the statutes under section 776, Penal Code, while he is being impeached under section 540 of the Corrupt Practices Act.

Thirdly, impeachment under the Corrupt Practices Act fails, because this act provided abundant time for any citizen, or several citizens, to demand an amended report within sixty days, or after the date which respondent took office. Although this report was published in the press, it was a public record for two months and open to scrutiny and known to people in his business office no one objected to this report, and according to the act further proceeding is blocked.

It seems strange that in a State of 9,000,000 of population, and that the respondent was opposed by several active political parties, that any discrepancies in the report was not discovered.

Witness Sarecky's story of the preparation seems sincere and truthful.

So far as concerns the course of our deliberations, it is fortunate that there is little or no opportunity for difference concerning the meaning of the evidence which has been produced and the facts which have been established in this proceeding.

I do not understand the Presiding Judge and others to doubt, but rather they believe and concede, that all of the substantial facts alleged by the Managers in the first, second and sixth articles have been fully proven. The denials or explanations which all hoped the respondent might make under oath from the witness stand have not been made and there can be no doubt that he stands convicted of wrongful and disgraceful conduct.

Outside of the ready receipt of voluntary donations, he made his candidacy for the Governorship a basis from which he importunately levied contributions on those within his reach, and these acts after his election found their natural sequel in a deliberate, systematic and wrongful violation of the Corrupt Practices Act, which required him to make return of such contributions. As I say, these facts are undisputed. We are, therefore, spared the possibility in our deliberations of that bitterness and involuntary partisanship which sometimes springs up where there are involved the contradictions and credibility of witnesses and disputed questions of fact, and we are led for our final conclusions

to the debate and consideration of questions of law which surely we can approach deliberately and coldly, seeking only that result which commends itself to our unimpassioned judgment.

I agree fully with what has been said by the learned Presiding Judge, to the effect that the respondent cannot be convicted of technical perjury under the second charge or of larceny under the sixth one, and I shall not discuss those matters. But the evidence offered in support of them does cast a very illuminating light upon the respondent's motives and acts which are involved in the first article and to the immediate consideration of which I now pass.

That article charges him with wilful and wrongful violation of the statute against Corrupt Practices in connection with elections because he did not make a full and true return of the contributions received for purposes of the campaign in which he was elected Governor. As I have said, there is no question about the fact of his violation of the act, and I understand it to be in effect conceded by some, if not all, of my associates, that if these acts had been committed after he entered upon the office of Governor, they would have constituted an impeachable offense. The only suggestion is that they fall short of this character, because, although happening after election, they still occurred before the taking of office.

It seems to me that to thus construe the Constitution is unwarranted and undesirable. Its broad language, deliberately stripped of restrictions affixed in earlier Constitutions, manifestly does not in terms thus limit the power and right of impeachment. It provides: "The Assembly shall have the power of Impeachment." But it is said that by a process of interpretation we should read into the Constitution some restriction which would prevent impeachment for the present offense. I do not hear it clearly argued that it should be so construed as to prevent under all circumstances impeachment for acts occurring before taking office. The argument seems to be that there is a somewhat wavering line of distinction which I am not able at all times to follow, but which at least is claimed to exclude the present offense. There are, in my opinion, no commanding precedents or principles which require this construction. Perhaps the argument in support

of it, which appears to be as strong as any, is the one that at the time our Constitution was last amended in 1894 there was and for a long time had been upon the statute books the provision now found in section 12 of the Criminal Code that " The court for the trial of impeachments has power to try impeachments, when presented by the Assembly, of all civil officers of the State, except justices of the peace, justices of the justices' courts, police justices, and their clerks, for wilful and corrupt misconduct in office." And the principle is invoked that although a statute cannot impair the power of impeachment conferred by the Constitution, the latter should be interpreted as adopted in the light of an existing statutory provision and be regarded either as impliedly containing the limitation expressed in the statute or else as leaving to the Legislature the power to define under the general constitutional clause the offenses for which impeachment would lie.

So far as the latter contention is concerned it would give to the Legislature the indirect power by so-called definition to accomplish what it is conceded it cannot directly do — override the Constitution. Thus we come back to the first contention that the broad language of the Constitution is by interpretation based on reference to the statute to be narrowed by the restrictions found in that statute.

The provision now in the Criminal Code was enacted in 1881, but it was in substance a re-enactment of part of what had been found in the Revised Statutes prior to 1846. The Constitution prior to 1846 contained a similar restriction, but in that year, with the statute still in force, it was amended by eliminating the restriction and placing the impeachment provision in the broad form now found. In view of this change thus made in the face of the statute, it does not seem to me that we can fairly say that there is evidence of any intention to narrow the meaning of the Constitution by impliedly writing into it the limitations of the statute which were then being explicitly stricken out.

Again, there was in existence at the time of the Constitutional convention in 1904 a decision by a High Court of Impeachment in this State in the Barnard case holding that an official might be impeached and removed from office for offenses committed during

a preceding term of office, which, in my opinion, must have been quite as much before the minds of the members of the Constitutional convention as the provision of the Criminal Code and which decision is certainly an authority for the proposition that an official may be impeached for offenses committed before taking the office, from which it is proposed to remove him, and this view that an official may be thus impeached and removed is sustained by the argument of so distinguished and profound a constitutional lawyer as Senator Root in the recent Archbold trial.

Thus I reach the conclusion that a fair and reasonable interpretation of the Constitution does not arbitrarily prohibit the impeachment of an official for an act performed before entering upon his office; that its fair and reasonable construction is not to the effect that an official who might and would be impeached for a given act if committed on January 2d is arbitrarily and at all events made immune from such punishment if such act was committed on the thirty-first day of December.

It is unnecessary and would be unwise to attempt generally to define just what nature of acts committed before induction into office would justify and sustain impeachment. None of us contend for any general and dangerous enlargement of the right of impeachment. The only question for us to consider is whether the violation by the respondent of the statute against corrupt practices, under the circumstances and in the manner disclosed, is an impeachable offense, and that leads to a very brief consideration of the purposes of this act.

Undoubtedly one of the objects of the statute requiring a candidate to make a public statement of campaign contributions received by him, was to give a starting point and make it more easy to ascertain whether he had been guilty of the corrupt and unlawful expenditure of money in aid of his election. So far as that object is concerned, it has been rightly said that it is applicable to every candidate for office, whether successful or not, and has no special bearing upon the successful candidate who subsequently enters upon the office. But as it seems to me, we may fairly attribute another purpose to this act. In view of the public agitation concerning and deep feeling against campaign contributions to a candidate by corporations and those who might

have special and selfish interests in his official acts, it is reasonable to believe that another aim of this act was to compel the successful candidate, by publishing his campaign contributions, to make it clear what influences of this character, if any, attended and accompanied and surrounded him as he entered upon his office and upon the discharge of his official duties and entered into the discharge of those duties. Certainly this beneficial purpose is accomplished by the statute, and in this aspect it relates to and affects solely the successful candidate and the discharge of his official duties and, as it seems to me, its violation in the present case has such a relation to the office of the respondent, to his official tenure, and to the discharge of his official duties, that it reasonably and rightfully comes within the spirit of the Constitution and principles applicable to impeachment.

I do not share the feeling that there is any peril in so holding. Of course the possession of power always gives the opportunity for its misuse, but I cannot believe that the Assembly as an impeaching body, or the Senate and the Court of Appeals as the triers of the charges, would ever yield to any disposition to impeach and remove men from office for mere political offenses. In addition to this, we are on the eve of a constitutional convention, and if the people of the State feel unwilling to entrust to the bodies named the power to impeach and try for such an offense as I have described and as is here presented, it may easily place in the Constitution a prohibition against so doing.

The Clerk.— Senator Emerson.

The President.— Senator Emerson, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Emerson.— Not guilty.

The Clerk.— Senator Foley.

The President.— Senator, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Foley.— I vote guilty, and hold that the allegations of Article I charge impeachable offenses. The Constitution grants the power of impeachment to the Assembly without limitation,

and the enactment of section 12 of the Code of Criminal Procedure was a futile attempt by legislation to curtail this constitutional power. The acts charged against the respondent were directly connected with and incident to his duties as Governor. Corrupt practices acts are two-fold in purpose. One, to guard against corruption at elections; and second, to guard against corruption — to acquaint the public with the influences, obligations and favors under which a candidate enters office. As stated by Governor Marcy, "Power corrupted in its source disorders the whole Government." But it is contended that this Court cannot consider an act committed before taking office. The criminal law of the State at least provides otherwise. If the respondent had solicited a bribe immediately after election but before taking office he could have been convicted under section 1823 of the Penal Law, and if so convicted would have forfeited his office. This statute was expressly continued and recognized by Article 13, section 2 of the Constitution. Can a criminal court therefore have greater jurisdiction than this High Court of Impeachment? Every one will concede if an act of bribery was charged and proved here against the respondent that he had solicited a bribe after election and before taking office, that this Court would have convicted him unanimously. And such an act is simply in point of time and very little difference in character from those charged here.

I think the argument that this Court has not jurisdiction, therefore, of acts committed before taking office, but after election, is dangerous and unsound. Happily for our State and country, though, no case has arisen before, when the necessity presented itself for a removal, but we should be ready to establish this wholesome precedent, that a Court of Impeachment has the power to remove an admittedly unfit public official for acts committed before taking office.

The Clerk.— Senator Frawley.

The President.— Senator, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Frawley.— Mr. Presiding Judge, on this article I vote guilty. Not being a lawyer, I will pass no opinion as to the rights of this Court to impeach or not. I find that the High

Court of Appeals are divided upon the question of impeachment themselves; therefore, upon the facts, I cast my vote guilty.

The Clerk.— Senator Godfrey.

The President.— Senator Godfrey, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Godfrey.— I vote guilty.

The Clerk.— Judge Gray.
(No response.)

The Clerk.— Senator Griffin.

The President.— Senator Griffin, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Griffin.— Mr. President, before announcing my vote on this charge, I want to formulate certain propositions of law and fact, which, in my opinion, have been clearly established upon this trial:

1. The commission of a crime by a public officer is not necessary to be proven in order to bring the conduct of the accused within the category of impeachable offenses, or within the jurisdiction of this Court.

2. That moral turpitude is a sufficient ground for impeachment, in that it tends to scandalize the official charged therewith, bring him into disrepute, destroy confidence in him, and prejudicially affect the proper and efficient performance of his public duties, as well as humiliate and scandalize the commonwealth.

3. The uncontradicted facts show that the respondent was guilty of moral turpitude.

4. That this moral turpitude was a continued offense; that it continued so long as the respondent permitted his false and his dishonest statement of campaign expenses to remain in the archives of this State as a false public record.

After the first day of January, 1913, when he assumed his gubernatorial duties, if the taking of his solemn oath of office had awakened his sleeping conscience, and aroused in him a realization of his misconduct, he could and should have corrected this fraudu-

lent record. He could have corrected this fraudulent record at any time up to the time of the adoption by the Assembly of the articles of impeachment.

I am inclined by the high respect and admiration in which I hold him, to follow the lead of the Presiding Justice of this Court, but, as much as my heart leans towards him, I cannot force my mind to yield to his viewpoint. I hold the view that it is unnecessary to pass on constitutional questions. If it were a question of conviction for a crime, the time when the physical act was committed might be competent, but I feel convinced that the moral guilt of the respondent involves as much acts of omission as a mere act of commission. These acts which were discreditable acts of omission, continued after his taking the office of Governor. I hold, therefore, that there is no need of establishing, nor is there any fear of establishing any new precedent, where the act complained of was an offense, the gravamen of which not only consisted of the original violation of law by the filing of the false statement, but in permitting it to lie among the archives of this State as a false, misleading and fraudulent public record. Indeed, in public estimation, here is the head and front of his offending. The filing of the original statement might have been a mistake. The brazen effrontery of the respondent, as manifested in his failure to correct it, constituted an act of moral turpitude, of equal, if not greater gravity than the original offense. The filing of the false and fraudulent statement in violation of the statutory, as well as the moral law, was an offense of commission. His failure to correct it after the first day of January, 1913, was an offense of omission. Like that, for instance, of the criminal, who, having the means at hand, refuses to make restitution or reparation, but continues to profit by his own moral obliquity.

Therefore, I hold that the offense is sufficiently set forth in the articles of impeachment, and I quote from page 61 of the record, which states as follows:

> "And thereafter, having taken the oath as Governor, and preceding the performance of duties thereof, the said false statement thus made and filed by him caused great scandal and reproach to the Governor of the State of New York."

For these reasons, I vote guilty.

The Clerk.— Senator Heacock.

The President.— Senator, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Heacock.— Mr. President, I vote not guilty.

The Clerk.— Senator Healy.

The President.— Senator, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Healy.— Mr. Presiding Judge: As a layman, I have listened to all that has been said by the learned members of the Court of Appeals who are members of this High Court of Impeachment. I have also listened to the law as laid down by the attorneys, both for the Managers and for the respondent.

I have endeavored to reach a conclusion that will justify me in voting on this question, and I believe that I am justified in voting as I shall.

Article I of the articles of impeachment, appears to be at this time that it has not even been stated that the facts complained of in that article are not true. It appears to me that it is conceded that Article I is proven, and when you take into consideration the fact that the respondent — which Article I charges — when we take into consideration his past life and environment, we find that we deal with a man who has been in public life and a public official for the past twenty years of his life; of course, it must be conceded that he was not a public official in the sense of being the Governor of this State when these acts were committed, but he knew the law. He helped create the law that he has given offense to.

There has been a great deal said as to the constitutionality of the right of this Court to vote the respondent guilty for acts committed while not in office. The Constitution of the State of New York seems to me to be without restriction. It has been stated that some intent must have been in the minds of those who changed the Constitution in 1846 and again in 1904, that would still justify the contention that a restriction existed to-day, but I cannot see that. I cannot see it because of the fact that we have no manner of record that gives the attitude of mind or the inten-

tion of those who made that change. Therefore, I believe the Constitution as now written on the statute books of the State of New York does not restrict it in the slightest degree. I believe it is within the rights of this Court to find him guilty.

Believing further that the moral law and truth itself are of greater importance than any written law, as truth and morality are the pattern of law, I believe that the fear of setting a precedent of law by the finding of the guilt of the respondent is not of consequence when you consider truth and morality, as we should. Therefore, I find the respondent guilty.

The Clerk.— Senator Heffernan.

The President.— Senator Heffernan, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Heffernan.— Mr. President, I believe the respondent guilty. I vote guilty.

The Clerk.— Senator Herrick.

The President.— Senator Herrick, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Herrick.— Mr. President, I believe the respondent committed the crimes charged in Article I, but I am convinced that we can not consider and impeach for offenses, those acts done before he took office. I vote not guilty.

The Clerk.— Senator Hewitt.

The President.— Senator Hewitt, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Hewitt.— Guilty.

The Clerk.— Judge Hiscock.

The President.— Judge Hiscock, how say you, is the respondent guilty or not guilty as charged in the first article of impeachment?

Judge Hiscock.— I vote that the respondent is guilty under this article. And inasmuch as I, like others, have stated in consultation in full my reasons for reaching that conclusion, and also shall file a written opinion setting forth those reasons, I shall only briefly outline at this time what they are as they led me to this decision.

We are all, I think, certainly a majority of us, agreed that the respondent wilfully and wantonly violated the statute relating to corrupt practices, which required him to file a complete and honest statement of the contributions which he had received for campaign purposes.

I am unwilling to accept the view that the Constitution arbitrarily forbade the Assembly to impeach, or forbids this Court to try the respondent because that offense was committed before he actually entered upon his office. The offense was committed after his election and, therefore, that argument which might sometimes apply that the people by electing him had absolved him from his fault does not apply here.

I think that the offense with which he has been convicted on the facts, of violating this statute, rises to the dignity of an impeachable offense. It hardly seems to me pertinent, or very relevant, to discuss the possibility that some public official might be impeached and tried for some remote, or trivial, or political, or personal fault; that is not the question which is presented here.

It seems to me that this statute which we are considering had two purposes, one was by compelling a candidate to state the contributions which he had received to furnish the starting point for the determination, whether, in his expenditures, he had been guilty of corruption of bribery, or fraud, and, in that aspect, the statute applied to every candidate, whether successful or not, and not especially to the respondent as a successful candidate. But it seems to me that the statute had that other aspect, which has been referred to, of compelling a candidate to disclose the contributions which had been made to his campaign, and in that way to disclose those influences which contributed to his election and which, perhaps, might attend and follow him as he entered upon his office while he was in the office and during the performance of his official acts, an influence which might enter into the performance

of those acts, and in that respect it applied especially to the respondent as the successful candidate and, as I say, rises to the dignity of an impeachable offense.

I am not deterred, as perhaps others may have been, by the fear that we are setting a dangerous precedent. It seems to me, as I have indicated, that the statute and the violation of it relate to the official tenure and to the official acts of the respondent. If this view shall seem to be wrong in its interpretation of the Constitution, if the people of this State feel that we are indeed, setting a dangerous precedent in adopting that view, we are on the eve of a Constitutional convention and they can write into the Constitution in language which will be subject to no mistake, their will that no official shall be impeached or tried for any offence which he has committed before he entered upon his office.

So far as concerns the course of our deliberations it is fortunate that there is little or no opportunity for difference concerning the meaning of the evidence which has been produced and the facts which have been established in this proceeding.

I do not understand the Presiding Judge and others to doubt, but rather they believe and concede, that all of the substantial facts alleged by the managers in the first, second and sixth articles have been fully proven. The denials or explanations which all hoped the respondent might make under oath from the witness stand have not been made and there can be no doubt that he stands convicted of wrongful and disgraceful conduct.

Outside of the ready receipt of voluntary donations, he made his candidacy for the Governorship a basis from which he importunately levied contributions on those within his reach, and these acts after his election found their natural sequel in a deliberate, systematic and wrongful violation of the Corrupt Practices Act, which required him to make return of such contributions. As I say, these facts are undisputed. We are, therefore, spared the possibility in our deliberations of that bitterness and involuntary partisanship which sometimes springs up where there are involved the contradictions and credibility of witnesses and disputed questions of fact, and we are led for our final conclusions to the debate and consideration of questions of law which surely we can approach deliberately and coldly, seeking only that result which commends itself to our unimpassioned judgment.

I agree fully with what has been said by the learned Presiding Judge, to the effect that the respondent cannot be convicted of technical perjury under the second charge or of larceny under the sixth one, and I shall not discuss those matters. But the evidence offered in support of them does cast a very illuminating light upon the respondent's motives and acts which are involved in the first article and to the immediate consideration of which I now pass.

That article charges him with wilful and wrongful violation of the statute against corrupt practices in connection with elections because he did not make a full and true return of the contributions received for purposes of the campaign in which he was elected Governor. As I have said, there is no question about the fact of his violation of the act, and I understand it to be in effect conceded by some, if not all, of my associates, that if these acts had been committed after he entered upon the office of Governor, they would have constituted an impeachable offense. The only suggestion is that they fall short of this character, because, although happening after election, they still occurred before the taking of office.

It seems to me that to thus construe the Constitution is unwarranted and undesirable. Its broad language, deliberately stripped of restrictions affixed in earlier Constitutions, manifestly does not in terms thus limit the power and right of impeachment. It provides: "The Assembly shall have the power of Impeachment." But it is said that by a process of interpretation we should read into the Constitution some restriction which would prevent impeachment for the present offense. I do not hear it clearly argued that it should be so construed as to prevent under all circumstances impeachment for acts occurring before taking office. The argument seems to be that there is a somewhat wavering line of distinction which I am not able at all times to follow, but which at least is claimed to exclude the present offense. There are, in my opinion, no commanding precedents or principles which require this construction. Perhaps the argument in support of it, which appears to be as strong as any, is the one that at the time our Constitution was last amended in 1894 there was and for a long time had been upon the statute books the provision now found in section 12 of the Criminal Code that "The court for the trial

of impeachments has power to try impeachments, when presented by the Assembly, of all civil officers of the state, except justices of the peace, justices of justices' courts, police justices, and their clerks, for willful and corrupt misconduct in office." And the principle is invoked that although a statute cannot impair the power of impeachment conferred by the Constitution, the latter should be interpreted as adopted in the light of an existing statutory provision and be regarded either as impliedly containing the limitation expressed in the statute or else as leaving to the Legislature the power to define under the general constitutional clause the offenses for which impeachment would lie.

So far as the latter contention is concerned it would give to the Legislature the indirect power by so-called definition to accomplish what it is conceded it cannot directly do — override the Constitution. Thus we come back to the first contention that the broad language of the Constitution is by interpretation based on reference to the statute to be narrowed by the restrictions found in that statute.

The provision now in the Criminal Code was enacted in 1881, but it was in substance a re-enactment of part of what had been found in the Revised Statutes prior to 1846. The Constitution prior to 1846 contained a similar restriction, but in that year, with the statute still in force, it was amended by eliminating the restriction and placing the impeachment provision in the broad form now found. In view of this change thus made in the face of the statute, it does not seem to me that we can fairly say that there is evidence of any intention to narrow the meaning of the Constitution by impliedly writing into it the limitations of the statute which were then being explicitly stricken out.

Again, there was in existence at the time of the Constitutional Convention in 1904 a decision by a High Court of Impeachment in this State in the Barnard case holding that an official might be impeached and removed from office for offenses committed during a preceding term of office, which, in my opinion, must have been quite as much before the minds of the members of the Constitutional Convention as the provision of the Criminal Code and which decision is certainly an authority for the proposition that an official may be impeached for offenses committed before

taking the office, from which it is proposed to remove him, and this view that an official may be thus impeached and removed is sustained by the argument of so distinguished and profound a constitutional lawyer as Senator Root in the recent Archbold trial.

Thus I reach the conclusion that a fair and reasonable interpretation of the Constitution does not arbitrarily prohibit the impeachment of an official for an act performed before entering upon his office; that its fair and reasonable construction is not to the effect that an official who might and would be impeached for a given act if committed on January second is arbitrarily and at all events made immune from such punishment if such act was committed on the thirty-first day of December.

It is unnecessary and would be unwise to attempt generally to define just what nature of acts committed before induction into office would justify and sustain impeachment. None of us contend for any general and dangerous enlargement of the right of impeachment. The only question for us to consider is whether the violation by the respondent of the statute against corrupt practices, under the circumstances and in the manner disclosed, is an impeachable offense, and that leads to a very brief consideration of the purposes of this act.

Undoubtedly one of the objects of the statute requiring a candidate to make a public statement of campaign contributions received by him, was to give a starting point and make it more easy to ascertain whether he had been guilty of the corrupt and unlawful expenditure of money in aid of his election. So far as that object is concerned, it has been rightly said that it is applicable to every candidate for office, whether successful or not, and has no special bearing upon the successful candidate who subsequently enters upon the office. But, as it seems to me, we may fairly attribute another purpose to this act. In view of the public agitation concerning and deep feeling against campaign contributions to a candidate by corporations and those who might have special and selfish interests in his official acts, it is reasonable to believe that another aim of this act was to compel the successful candidate, by publishing his campaign contributions, to make it clear what influences of this character, if any, attended and accompanied and surrounded him as he entered upon his office

and upon the discharge of his official duties and entered into the discharge of those duties. Certainly this beneficial purpose is accomplished by the statute, and in this aspect it relates to and affects solely the successful candidate and the discharge of his official duties and, as it seems to me, its violation in the present case has such a relation to the office of the respondent, to his official tenure, and to the discharge of his official duties, that it reasonably and rightfully comes within the spirit of the Constitution and principles applicable to impeachment.

I do not share the feeling that there is any peril in so holding. Of course the possession of power always gives the opportunity for its misuse, but I cannot believe that the Assembly as an impeaching body, or the Senate and the Court of Appeals as the triers of the charges, would ever yield to any disposition to impeach and remove men from office for mere political offenses. In addition to this, we are on the eve of a constitutional convention, and if the people of the State feel unwilling to entrust to the bodies named the power to impeach and try for such an offense as I have described and as is here presented, it may easily place in the Constitution a prohibition against so doing.

Therefore, Mr. Presiding Officer, as I say, I vote guilty upon this article.

The Clerk.— Judge Hogan.

The President.— Judge Hogan, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Judge Hogan.— Mr. Presiding Officer, it is not surprising, in view of the eminent counsel on both sides of this proceeding, and the division of sentiment existing among members of the highest Court of record in this State, that the question which has been presented so ably by the Presiding Judge, concurred in by Judge Bartlett and Judge Chase, should have caused more than ordinary controversy.

In consultation I expressed my views on the construction of the Constitution, the power of impeachment, largely in accordance with the views this moment expressed by one of my associates, Judge Hiscock, saving only that I extended the power of impeach-

ment under our Constitution to acts of misconduct by officers prior to their induction into office, in some way related to or connected with the office which they were about to assume and limiting its application to the time of the selection of the candidate.

I am not going to take the time now to dwell upon the views that I expressed in consultation. I shall submit them in writing.

Entertaining the views I have briefly expressed, in my vote on this article I find the facts therein alleged undisputed and in my view of the power of the court I am constrained to vote the defendant guilty on Article 1.

The Clerk.— Senator McClelland:

The President.— Senator McClelland, how say you, is the respondent guilty or not guilty as charged in the first article of impeachment?

Senator McClelland.— Presiding Judge, I realize the importance of expedition in this matter, consistent with proper and efficient administration of justice and I don't desire to trespass upon the patience or time of the Court in what I shall say.

I will address myself briefly to just one consideration. That is this:

That the respondent has objected to the consideration of the act complained of in Article 1 upon the ground that that act or those acts were committed before he entered upon the discharge of his duty as Governor of the State of New York. That argument has been answered by the Judges of the Court of Appeals here, in my judgment sufficiently and conclusively, but there was one suggestion that occurred to me that I thought I might call the attention of the Court to.

The provision of the Corrupt Practices Act requiring that within ten or twenty days after the election he shall do something; that he shall file a statement, and that statement shall conform to certain requirements described in that section; that he shall make a statement of moneys received and moneys distributed.

Now, as the Judges have said here, this was not an act committed before election. It is an act committed after election, and necessary for him to do in order to acquire the right of possession to his office. Now, suppose, for instance, the respondent had just

simply said, "I will make no statement, and file no statement of receipts and expenditures." He had not done it. The twentieth day had passed, and it came up to the first of January and he had not done it then. What would be the position? Is the State absolutely without any control or jurisdiction over the Governor? Ah, say some people, and you point to cases in the past where the Courts have said that you cannot deprive an official of his office for any act that he has done heretofore. You point to the Barnard case and you point to other cases. Well, now, the situation there is entirely different from the one that is presented in this case. There was no corrupt practices act, there was no condition precedent that was required by law that this man should do, or this candidate should do. Seven or eight years ago the Legislature of this State passed a law which made it precedent that a candidate for public office, within a certain time after election, shall do something. Now, that was not to be treated as a detail. That was a duty, and the policy of the State has been clearly described here by the distinguished jurists and the Senators who had participated in this debate. It was a matter of public policy. And to say that the Legislature shall declare public policy and that it is absolutely without any power to enforce it is an absurdity. And here is just where the power of the Impeachment Court in the wisdom of those who have created it under the constitution, not limiting it as it originally had, but giving to the Assembly the right and jurisdiction to find articles of impeachment, is presented in this case.

Now, let me call your attention to this situation by way of analogy. Suppose a candidate for governor should obtain his office by bribery. Suppose a governor should spend $100,000, and bribe public officials in order to be inducted into office, and that fact should come out, and he should be inaugurated. Is there any gentleman here who has any claim to any sort of reason that would say that a Court of Impeachment would not have jurisdiction to evict that man from office if that fact was found out? Why? Upon the ground of public policy. The necessities of protection of government requires that the State shall be preserved, and that was the purposes and objects of the organization of the Impeachment Court. It is a Court of emergency. Now,

so far as that is concerned, I do not desire to take up the time of this Court further than to say that the views that I entertain upon the culpability of the respondent under article first have been more clearly stated in the splendid argument of Judges Cuddeback, Hiscock and Hogan, more clearly than I can state, and with the suggestion in addition to that made, may it please you, Mr. Presiding Judge, I fix my vote as that of guilty.

The Clerk.— Senator McKnight.

The President.— Senator McKnight, how say you, is the respondent guilty or not guilty as charged in the first article of impeachment?

Senator McKnight.— Not guilty.

The Clerk.— Senator Malone.

The President.— Senator, how say you, is the respondent guilty or not guilty as charged in the first article of impeachment?

Senator Malone.— Mr. Presiding Officer, as a lay member of this Court I listened very carefully to the testimony relative to this article. I have also listened to the opinions of the Court, and looking at it from all angles, always keeping in mind the notion of giving the benefit of the doubt to the accused, I have come to the conclusion that the respondent is guilty.

The Clerk.— Judge Miller.

The President.— Judge Miller, how say you, is the respondent guilty or not guilty as charged in the first article of impeachment?

Judge Miller.— Mr. Presiding Judge, the question whether the first article charges an impeachable offence is novel. The decision of it involves consequences which cannot be foreseen.

I entertain such decided views upon the subject that I consider it my duty to state them.

Article VI, section 13 of the Constitution provides: "the Assembly shall have the power of impeachment, by a vote of a majority of all the members elected. The Court for the Trial of Impeachments shall be composed of the President of the Senate, the Senators, or the major part of them, and the Judges of the Court of Appeals, or the major part of them."

A more unlimited grant of power could not be expressed. As the discussions in the convention of 1894 shed no light on the point, and as those words were taken literally from the Constitution of 1846, it is reasonably plain that no change was intended. When we go back to 1846, we find that a decided change was then deliberately made. The Constitution of 1821 provided, "The Assembly shall have the power of impeaching all civil officers of this State for mal and corrupt conduct in office, and for high crimes and misdemeanors". It is significant that the words "and for high crimes and misdemeanors" were in 1821 added to the language of the Constitution of 1777, and it is reasonably plain that they were not tautological but were intended to enlarge the power conferred. Those words were doubtless used in the sense of the Law of Parliament, and not in the sense of common law or statutory crimes, and it is to be noted that they were not limited by the phrase "in office" as were the preceding words "mal and corrupt conduct." So we find that the power was first limited to "mal and corrupt conduct in office," next to "mal and corrupt conduct in office and high crimes and misdemeanors" and was finally conferred in general language without limitations or restrictions. The change in 1846 was not accidental. Mr. Dana offered a resolution to substitute practically the language of the Constitution of 1821 and it was rejected. The Revised Statutes of 1830, Part I, Title II, section 15 did provide for impeachment in the language of the Constitution of 1821 and that provision remained on the statute books long after the adoption of the Constitution of 1846. But in purposely omitting the limitation imposed by the Constitution of 1821 the framers of the Constitution of 1846 could not have intended by implication to incorporate the same limitation found in the Revised Statutes. And that consideration to my mind destroys the force of the argument that the present Constitution was adopted with

reference to the Code of Criminal Procedure which primarily deals with procedure and not substantive law. Undoubtedly contemporaneous evidence is of the highest value in interpretation. The commissioners who reported the Code of Criminal Procedure to the Legislature in 1849 said in their note to the proposed section 17, now section 12, among other things: "The Constitution of 1821, art. 5. section 2, defined this power by applying it to 'mal and corrupt conduct in office' which is substantially the same as in the Constitution of 1777, section 33," and they dogmatically asserted that the power referred to in the Constitution of 1846 is the same as that formerly existing. The inaccuracy of their statement destroys its value as contemporaneous exposition. Another piece of contemporaneous evidence relied upon by counsel for the respondent is equally valueless. The judiciary committee reported to the Assembly on June 23, 1853, that after a hasty consideration of the subject they had concluded:

"1. That a person whose term of office has expired is not liable to impeachment for any misconduct under sec. 1, Art. 6, of the Constitution.

2. That a person holding an elective office is not liable to be impeached under sec. 1, Art. 6, of the Constitution for any misconduct before the commencement of his term, although such misconduct occurred while he held the same or another office, under a previous election."

They were overruled on the second point by the judgment in the Barnard case, and on the first point by the vote of a majority of the court in the Belknap case, although in the latter case less than two-thirds concurred. But writers on the subject now substantially agree that the decision of the majority in that case was right.

Could it have been intended to confer power on the Legislature to impose a limitation purposely omitted from the Constitution of 1846? The power to define necessarily involves the power to limit. Moreover, the words in section 12 of the Code of Criminal Procedure "for wilful and corrupt misconduct in office" like the earlier provisions on the subject in the Revised Statutes, and the Constitutions of 1777 and 1821, are words of limitation not of definition. If that section is a valid limitation on the power broadly conferred by the Constitution, it virtually restores the con-

stitutional limitation of 1777, although that limitation was first narrowed and then purposely omitted by successive Constitutions. I cannot believe that the Legislature has the power to limit the broad power conferred by the Constitution. The nature of the subject precludes definition. As far as my research goes no one has yet attempted accurately to define impeachable offenses.

There is strong internal evidence that it was not intended to limit impeachable offenses to misconduct in office. Article X relates generally to certain county officers and to those whose election or appointment is not expressly provided for. Section 7 thereof, which was taken from the Constitution of 1846, provides, "Provision shall be made by law for the removal for misconduct or malversation in office of all officers, except judicial, whose powers and duties are not local or legislative and who shall be elected at general elections, and also for supplying vacancies created by such removal." Plainly that section has nothing to do with impeachment, and the marked difference between its language and that of section 13 of Article 6 could not have been accidental. The power of removal which could be lodged by the Legislature in a single officer might be abused, and so it was expressly limited to "misconduct or malversation in office." That danger was guarded against in Article 6 by the constitution of the court for the trial of impeachments, which prior to 1846 was the court for the correction of errors as well.

There is positive evidence that the framers of the Constitution of 1846 did not intend that the Legislature should have the power to limit by definition the causes of impeachment. Mr. Flanders offered the following substitute for the first section of Article 6:

> "§ 1. The legislature shall define offences in office, and provide for the trial and punishment of persons guilty of such offences in the ordinary courts of the state. The indictment of any officer for any act declared by law to be an official offence, shall operate as a suspension of the powers of such officer, until he shall be convicted on such indictment, such conviction shall operate as a removal from office."

The following debate occurred:

> "Mr. Flanders said his object was to introduce something into our Constitution that would be of some effect. He pro-

> posed to place persons liable to impeachment on a par with all other offenders, giving them the same right of defence and prescribing the result of a conviction."

Mr. Worden said all this (evidently referring to the last statement of Mr. Flanders)

> "was in the law now. All the legislature could say would be, that any officer omitting to do his duty or acting corruptly, should be liable to indictment. He apprehended that it would be unsafe to define in a law what offences should be punishable.— For it was beyond the power of human ingenuity to think of everything that would be punishable. And to name some, we should run the hazard of excluding others that should be included. He was fully convinced that the present law (evidently meaning the common law) was sufficient."

The substitute was rejected.

After all, the real question is what was the intention of the people who adopted the Constitution. That must be gleaned primarily from its language, which, when plain, should be given its natural import. And when we find in the Constitution a power over a subject, in its nature not susceptible of exact definition, conferred in the most general language without limitation, it should require strong evidence to show that it was intended that the Legislature should have the power to define or limit.

My conclusion, therefore, is that it was intended to confer the power to impeach upon the Assembly and the power to try upon the court for the trial of impeachments, without restriction or limitation. But it by no means follows that that is an arbitrary power to be exercised *ex post facto*. As has frequently been said before, as well as during this trial this is a government of laws and not of men. The people have entrusted this great power to a great court to be exercised according to the principles of the common law. This court has the power, of course, to make a wrong decision, which cannot be reviewed or collaterally attacked, but so has every court of last resort.

From what then are the principles, controlling our action, to be gleaned? Obviously from the nature of the subject and of

our institutions considered in the light of history and precedent. And here a word as to precedent. In the ever-changing conditions and constantly increasing complexity of society, we can not expect to find a precedent for every new state of facts. The common law would be a dead weight upon the progress of society if courts were afraid to make precedents; but in making precedents we do not make law, although the contrary seems to be argued. We need not be disturbed because among the scattered cases in the history of impeachment trials we find no precedent for a particular state of facts. Those of us who are engaged in the ordinary administration of justice know that, although the great principles of the common law are of daily application, principles never exactly formulated or declared have to be applied at times, and new applications are of constant occurrence. Especially must that be true in the case of impeachment trials, occurring at rare intervals and dealing in the main with political offenses. If satisfied that according to the dictates of right reason a given act constitutes cause for impeachment, it should be enough for us to know that there is no precedent to the contrary.

I do not think that it was intended by the present Constitution or that of 1846 to adopt the law of impeachment of England, the law of Parliament as it is called. The purpose of impeachment in this State as stated in the Constitution is removal from office or removal and disqualification to hold office. The purpose in England was mainly punitive. The law of Parliament is not, equally with the municipal law of England, adaptable to our conditions. We borrowed from England on the subject of impeachment little if anything more than the process. But it is to be noted that according to the writers on the subject the causes of impeachment in England were not confined to offenses in office, as private citizens could be impeached.

While the matter was once debated, it may now be regarded as settled by precedent and the consensus of opinion that the causes of impeachment are not confined to official acts or indictable offenses. The Barnard case in this State is authority for the proposition that they are not limited as to the time of their commission by a particular term of office. We may start then with the premise that the act or offense need not be official and that the taking

of the oath of office does not in point of time separate non-impeachable from impeachable offenses.

The principle is to be deduced from the nature and object of impeachment that the cause must be some grave misconduct evidencing particular disqualification to hold the given office or any office. The people are the judges of the qualifications of their elected officials, and it must follow that in a free government their determination cannot be reviewed by a Court of Impeachment. It logically follows from those two principles and from the propositions hereinbefore stated as established by authority, that a grave offense committed before induction into office may constitute cause for impeachment, provided it so touches the office and bears such a relation to the discharge of its duties as to unfit the offender to discharge those duties, and also provided that the consideration of it does not involve a review of the action of the people at the polls. In my opinion the evidence in this case establishes such a cause.

The facts have been discussed by others. We can entertain no difference of view respecting them. The respondent, in violation of law, made a false statement under oath of the contributions to his campaign fund, not as the result of carelessness or a misunderstanding of the law, but deliberately in the consummation of a preconceived plan to collect as many and as large contributions as possible and then to conceal the fact. I agree that he did not commit perjury or larceny, but his offense is not lessened by his moral theft of moneys given him for his campaign or by the fact that he made a false oath, which the statute did not require.

The offense charged in article I was committed after the election. Its consideration then does not involve a review of the determination of the electors. It was a political offense, an offense directly against the body politic, and not one whose immediate consequences were confined to particular individuals. Was it so related to his official life as to unfit him to discharge the duties of his office? That depends upon the purpose of the Corrupt Practices Act, which was first passed in 1906 and amended by chapter 596 of the Laws of 1907, so as to require candidates as well as political committees to file a statement of campaign contributions. It is not strange that there is no precedent for pre-

cisely such a case. The strange thing, in view of the purpose of the act, the disclosures which preceded its passage and the public discussions of the last few years, is that anyone should have so grossly violated it as to give occasion for this trial.

The dominant purpose of the act as disclosed by its title, its text, and contemporaneous political history was to secure publicity of campaign contributions and expenditures. That was a valid purpose and did not conflict with Article XIII, section 1, of the Constitution. Prescribing an oath, declaration or test as a qualification for an office is very different from requiring a statement of campaign contributions and expenditures to be filed. The officer elect may not enter upon his duties without taking the oath prescribed; the failure to file the statement or the filing of a false statement may or may not constitute cause for impeachment according to the circumstances of the case. Moreover the statute violated in this case does not come within the spirit or purpose of the said constitutional prohibition. Concededly the Legislature could provide for a forfeiture of the office upon conviction of a violation of the statute. A court of impeachment can convict and remove from office by a single judgment. Requiring disclosure of acts connected with a candidate's election to office, which the public have the right to know, is far different from requiring disclosure of one's private affairs with which the public have no concern. I attach in this connection no importance to the fact that defeated as well as successful candidates are required to make the statement.

There was and is a growing body of opinion that special interests by secret campaign contributions are enabled to exert an invisible and sinister influence on the conduct of public affairs. The purpose of requiring publicity was not simply to impose a check but to enable the public to scrutinize the conduct of their public officials in the light of the influences contributing to their election. Possibly the respondent made concealment because he did not wish the donors to find out how much more was contributed than expended. But the evidence tends to prove that his concealment was also due to a sense of improper obligation to the donors or some of them. The guilty consciousness, evidenced by unlawful concealment, of accepting money given for some ulterior purpose

would equally affect his official conduct, whether the money remained in his pocket, was invested in stocks in the hands of his brokers, or expended to promote his election. His violation of the Corrupt Practices Act evidences a situation as intimately related to the discharge of his official duty as though he had taken money for an express promise to reward the donor by some official act, and the case is brought squarely within the principle asserted by my Brother Bartlett in the Matter of Guden (71 App. Div. 426), when he wrote for the Appellate Division in the second department as follows:

> "Whatever the conclusion might be, if the acts committed before Guden entered into office had no direct relation to his subsequent official conduct, I am of the opinion that a corrupt promise, made before election, to exercise his official powers in a particular way, affords a sufficient basis in law for the removal of the officer by the Governor, under section 1 of article 10 of the Constitution. It seems to me that the relation of the promise to the subsequent official tenure is so close as to make the act of entering into such a corrupt agreement affect the usefulness of the officer as clearly and directly as could any misconduct committed wholly after the official term began."

While the decision of the Court of Appeals went upon another point (171 N. Y. 529), the soundness of that proposition was not questioned. That case involved the power of removal conferred upon the Governor in general language, and while not strictly analagous, is as closely in point as we could well expect to find.

The testimony of the witnesses Peck, Morganthau and Ryan exhibits the respondent's guilty consciousness of grave misconduct and illustrates what extreme acts in office one thus guilty may be led to commit. If the suppression of campaign contributions would lead to an attempt to suborn perjury it would be likely to lead to grave official misconduct; and no one can say to what extent the respondent's official acts have been or may be influenced by his concealment in violation of law of campaign contributions.

It is my opinion that the evidence strictly relating to article one shows that the respondent is totally unfit to hold the great

office of Governor of this State and I am unwilling to hold that there is no constitutional power to relieve the office of his incumbency.

I vote guilty.

The Clerk.— Senator Murtaugh.

The President.— Senator, how say you, is the respondent guilty or not guilty as charged in the first article of impeachment?

Senator Murtaugh.— Mr. President, in my opinion, the respondent is guilty of the charge or offences charged in article 1 of the articles of impeachment. Further, I am of the opinion that the offences therein charged are impeachable. The reason for my opinion I have set forth in a little statement, which I will file with the clerk. These reasons are in accord with the reasons set forth in the opinions of Judges Hiscock and Miller.

The Clerk.— Senator O'Keefe.

The President.— Senator O'Keefe, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator O'Keefe.— Mr. President, I vote not guilty.

The Clerk.— Senator Ormrod.

The President.— Senator Ormrod, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Ormrod.— Mr. Presiding Judge, I find him guilty as charged in the first article of impeachment.

The Clerk.— Senator Palmer.

The President.— Senator Palmer, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Palmer.— Mr. Presiding Judge, I recognize in the whole matter that has been so long before us, questions that are legal, questions that are ethical, and questions of expediency,

concerning only the latter two of which type of question do I feel myself in any manner qualified to speak.

I did not know William Sulzer in person, nor never knew him, if I saw him, till he mounted the stairs of the Capitol at Albany on the first day of January last. I have not seen him, nor heard from him, nor any member of his family, since this impeachment began. I need not say I did not vote for him. A man for whom I vote for Governor of this State must have clean hands, must be a gentleman in all the walks of life, must be a man of transparent mind, must be a man not prone to thinking evil of others, must be a good man. I do not say the Governor was or is or is not, but I did not know the Governor, and I did not vote for him. I say this in disclaiming any personal relation. The morals of this question I would gladly discuss, if this were the hour and this were the presence. The Corrupt Practices Act is a legal act, but from my standpoint, it is far below the morals that that act requires. I believe a man ought never to solicit a dollar in behalf of his candidacy from any one for an office, lest he puts himself under obligation which he has to pay with some public act, which is not his private property. I believe he should not pay a dollar to anyone to elect himself to an office, lest that money should be brought to the surface somewhere along the line.

The very fact that Governor Sulzer, as shown in the testimony here, collected money from many sources, becomes to me a matter of taste, rather than a matter of morals. It is not an immoral thing for a man to give me money. If he gives it thinking I will spend it in a way that I do not spend it, it becomes a question of taste, and a gentleman would naturally return it, or offer to return it, or say "I did not use it," or "I did not know it," and then if the friend says "Keep it," then I recognize that there is no harm in receiving gifts from friends. If this Governor had spent this money all over the State buying votes for himself I would have said then that he was guilty of an immoral act, but he seems to have done the one thing that makes it moral. He kept it, he salted it away, and he has it now. If he spent it for buying a horse and buggy, or buying a thousand shares of stock, it is a question of judgment, not a question of morals. I wish I could enter into a discussion of the morals of this case. I would like to discuss it from recent and historic development of morals.

Whether or not that saying is true, that a reformer is one who tries to stand a pyramid upon its apex I do not say. I do not therefore further here and now because of the lateness of the hour and the uselessness of the past and because I hope at some future time in an elaborate way to discuss it, enter upon the subject of the morals or of the expediencies of this case. This first article on which we are voting now is in the realm of legalities; whether or not it is legal to try a man for an offense — to impeach a man for an offense committed before he entered office — on the legalities of this case I have determined, wisely or unwisely, whether my constituents approve or not, to follow strictly the example of those distinguished jurists inspired by yourself, who from your youth up, from the day you commanded a regiment in the service of your country long ago to this hour, you who have no superior in the standing of your profession or of the esteem of the people of this State, I propose to follow your example on legal questions, and therefore I vote as you did, no.

The Clerk.— Senator Patten.

The President.— Senator, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Patten.— Mr. Presiding Judge and fellow members of the Court of Impeachment: I believe for me as a layman to discuss the constitutionality as to whether or not the respondent should be impeached for acts committed prior to his induction into office would be impudent. I accept the brilliant and logical exposition of the constitutionality of this case from Judge Miller. I have listened for the past three weeks to the evidence adduced on this particular charge and I believe that a case has been made out against the respondent. I believe the proof is indisputable that the Corrupt Practices Act of this State has been violated, and because of that and not because of any particular views that I may have on the Constitution, although as I said I am willing to accept Judge Miller's opinion, I vote the respondent guilty on Article I of the articles of impeachment.

The Clerk.— Senator Peckham.

The President.— Senator, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Peckham.— Mr. President, I believe that the first article should not be considered as a cause for impeachment as the article alleges offenses committed before taking office. The opinions of Chief Justice Cullen, Judge Bartlett and Judge Chase have made clear to me at least the intention of the framers of the Constitution, namely, that acts committed before induction into office are not to be considered as grounds for impeachment after having taken such an office. I vote not guilty.

The Clerk.— Senator Pollock.

The President.— Senator Pollock, how say you, is the respondent guilty or not guilty as charged in the first article of impeachment?

Senator Pollock.— Mr. Presiding Judge, I vote guilty on the charge upon grounds which I have set forth in an opinion which I ask permission to file.

The Clerk.— Senator Ramsperger.

The President.— Senator Ramsperger, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Ramsperger.— I vote guilty.

The Clerk.— Senator Sage.

The President.— Senator Sage, how say you, is the respondent guilty or not guilty as charged in the first article of impeachment?

Senator Sage.— Mr. President, that the respondent is guilty of the offence charged in article 1 there is ample proof. He made a false statement, but there is a connection between these acts done before inauguration and after inauguration. Why did he make this false statement? To conceal, first, the amount of his collections; second, the names of the contributors. I am convinced that these acts committed before inauguration are so closely connected with acts done after as to constitute one and the same offence for two reasons, first, that the respondent is now, as Governor, enjoying the benefits of the illegal acts committed before he became Governor. The squirrel who enjoys his garnered store

in the winter months is the same old squirrel. He doesn't steal now because there is nothing to steal, but when a kind Providence provides more nuts his nature will again assert itself. Second, in the testimony of Ryan, in asking for money and trying to get as much as possible, the respondent said: "Tell your father I am the same old Bill." Yes, the same old useful Bill. Doesn't everyone know why he got ten thousand dollars from Ryan? Ten thousand dollars from Meany of the New York Telephone Company. He had been useful in Congress. He could be more useful as Governor, and this money was merely given as retainer for services to be rendered in his new position.

"I am the same old Bill" is a most illuminating clause. He was the same old Bill who got $26,500 from Reilly, without collateral. Does anyone ask why? When he became Governor he was bought and paid for. He was the same old Bill who asked a State officer to commit perjury. He is the same old Bill to-day. He was no longer a free agent when he took office, and I believe that the acts committed before he took office and after he took office cannot be divorced. I therefore vote guilty.

The Clerk.— Senator Sanner.

The President— How say you, Senator, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Sanner.— I vote that the respondent is guilty under the first article.

The Clerk.— Senator Seeley.

The President.— How say you, Senator, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Seeley.— Not guilty.

The Clerk.— Senator Simpson.

The President.— How say you, Senator, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Simpson.— Mr. Presiding Judge, there has been so much said that little can I add, except that I desire to state my reasons for voting the respondent guilty, and they are these:

I am of the opinion that the causes of impeachment rest with the Assembly; that the Constitution does not, by its express terms, place any limitation upon the power of the Assembly to impeach. The respondent, in my opinion, is charged in Article 1 with an impeachable offense,— he did not make a true return in accordance with the Corrupt Practices Act, but wilfully, wrongfully and corruptly violated the statute and knowingly filed false statement — and this rises to the dignity of an impeachable offense, not too remote, but which continued as an offense, in my judgment, into his induction into office.

For these reasons, and because I believe under my solemn oath, it is my duty, irrespective of precedent,— and my duty being clear, I need not look for precedent, and I vote the respondent guilty of the offenses charged in Article 1 of the impeachment.

The Clerk.— Senator Stivers.

The President.— How say you, Senator, is the respondent guilty or not guilty, as charged under the first article of impeachment?

Senator Stivers.— Not guilty.

The Clerk.— Senator Sullivan.

The President.— How say you, Senator, is the respondent guilty or not guilty, as charged under the first article of impeachment?

Senator Sullivan.— Guilty.

The Clerk.— Senator Thomas.

The President.— How say you, Senator, is the respondent guilty or not guilty, as charged under the first article of impeachment?

Senator Thomas.— Presiding Judge, I am using the illustration of one of my fellow Senators, solely for the purpose of emphasizing my position on this charge.

Let us assume that the squirrel did take the nuts. Shall we then take our gun and go after him in the closed season? Shall we violate the Fish and Game Law to punish him? And who is

the worst criminal of the two, the squirrel that yielded to overwhelming instinct, or the man of intelligence that broke the law?

Agreeing with the learned Presiding Justice in his opinion that the acts set forth in articles I, II and VI of the Articles of Impeachment, do not constitute impeachable offenses, because such offenses are alleged to have taken place prior to the beginning of the term of office of this respondent, I vote not guilty upon this article.

The Clerk.— Senator Thompson.

The President.— How say you, Senator, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Thompson.— I accept the definition of the Constitutional features respecting the case from the majority of the Judges of the Court of Appeals, who have delivered exhaustive opinions on that subject.

I have no doubt that there is any limitation, constitutional, of the right of the Assembly to impeach. I do not believe that section 12 of the Code of Criminal Procedure in any way limits the Constitution. I do not think that section would be constitutional if it were in terms a limitation, which I think it is not. Assuming, however, that the Code of Criminal Procedure might be argued as a limitation, where it says the court, in the trial of impeachment, has power to try impeachments when presented by the Assembly, of all civil officers of the State, for "wilful and corrupt misconduct in office," taking that literally, I believe that the facts stated in Article I of the impeachment have been abundantly proven, and that they show wilful and corrupt misconduct in office.

I do not read the word "contribution" in the article in its ordinary sense. I do not believe that Jacob Schiff, Morgenthau and Ryan meant the contributions of those moneys to William Sulzer, candidate for Governor, for the purpose of having them expended in aiding in a legitimate may his election at all. I do not believe that is what the moneys were turned over to the man Sulzer for. I do believe that William Sulzer had had experience in the market, had experience in the stock market — that he had

experience in the stock market has been shown here — since 1910, he knew the value of certain securities; he knew the value of certain stocks known by name on the market, and he knew the value of William Sulzer, and after the nomination at the Syracuse Convention he knew also the value of William Sulzer, candidate, and he knew that, by adding the nomination, that security was of more value, and he proceeded to trade on the value of William Sulzer, nominee; it was found to be $2,500 and no more, and he accepted that.

In the course of his walks he found another market, and he found in that market that "the same old Bill" was worth more than the amount bid. He offered himself at $7,500 and received ten one thousand dollar bills.

The question has been raised as to whether those facts, having occurred before the last day of January, were impeachable offenses. I say those facts were so connected with acts to be performed that they were a part of the transaction at the time, and the performance of which was to be had after January first, and that it makes it an act which occurs partially before and completed afterward, after the man was inaugurated into the high office of Governor of the State of New York.

These moneys were given to him for a purpose. They were given to him as a candidate for something they expected to purchase of him after he should have been inaugurated as Governor; and I know from the evidence in this case what he, Sulzer, knew at that time, because we have in evidence his book of short speeches, and he made a short speech on this subject some time in 1908, when he was a member of Congress, on the question of the publication of campaign contributions, which was then up, and let us see what he has to say. I will quote it in part. He says:

> "This is a bill for honest elections. It affects the entire people of this country. It concerns the honor of the country. The honest people of the land want it passed."

To quote him again:

> "In every National contest of recent years the campaign has been a disgraceful scramble to see which party could raise the most money, not for legitimate expenses, but to carry out

a system of political iniquity that will not and cannot bear the light of publicity. Political corruption dreads the sun of publicity, and works in secret and in darkness."

To quote him again:

"This measure especially appeals to those patriotic people in our country who see grave dangers to the Republic in the growing evils incident to these large campaign funds. We should all advocate the bill for publicity from patriotic motives;" and finally, "The passage of such a bill would be a great victory for the plain people of the land, and will go as far in my judgment as anything that can be devised at the present time by the ingenuity of the human mind to effectually put a stop to political iniquity."

"These great political contributions made by the vested interests are not voluntary contributions, but are levied like taxes, and are generally made with the understanding, express or implied, that the contributors shall be protected against the rights of the people and shall be secure in robbing the many for the benefit of the few, and shall have meted out to them by the party in power certain special privileges which are repugnant to our free institutions."

That man knew that in 1908. He knew it the day he went to Ryan and knew it the day he went to Schiff. He knew it the day he got the money from Morgenthau.

Now, I do not put Morgenthau, Ryan or Schiff in any better class than Sulzer. If I had to classify them I might put them further down if it were possible. But this shows that Sulzer himself knew when he took this money that he had to deliver. And talk about an overwhelming instinct. I think that is a proper word. He had an overwhelming instinct, and if he did he carried it with him after the 1st day of January, 1913, and he has that overwhelming instinct to-day. If he did not, he would have been here on the stand and explained these matters to our satisfaction.

Therefore, Mr. President, it becomes unnecessary for me to pass upon the question as to whether or not there was a constitu-

tional limitation. I believe the facts stated in Article 1 are all proven. I vote guilty.

The Clerk.— Senator Torborg.

The President.— Senator, how say, you, is the respondent guilty or not guilty as charged in the first article of impeachment?

Senator Torborg.— Mr. President, the defense has chosen to rely entirely upon the grounds that the offences were committed before the Governor assumed his official duties, claiming that there is nowhere is the law a precedent for this Court to act upon the charges made against the Governor. Therein this case differs from any case tried before a court of impeachment.

There is an important link between the candidate for office and the officer himself. You cannot sever the connecting link between the candidate and the officer any more than you can sever the connection between sowing the seed in the fall and reaping the harvest in the spring. If there had been no sowing there could not have been a harvest.

Suppose, for instance, that Governor Sulzer had been elected in the year 1910 and that the election in 1912 would have been his re-election to office. Could the offence be charged to his former occupancy of the office? If he could be so held, then it may be well to take into consideration the fact that he was a member of the House of Representatives at the time.

As has been cited before, former Sheriff Guden had been removed from the office of sheriff of Kings county for pre-election promises. No doubt the framers of the Penal Law and the Corrupt Practices Act had in mind the greater danger with the candidate than the elected official. It is then indeed timely that this High Court of Impeachment recognize these acts and firmly establish and permanently fix such precedents.

It must have been considered a good law by the respondent when he hastened to comply with the existing law and file a statement acknowledging the receipt of $5,460, and expenditures of $7,724.09. He knew the law and I believe claims some credit for having had it enacted.

Mr. Sulzer has convicted himself by his refusal to take the stand and disprove the revelations of Allan A. Ryan, that the

Governor had sought him to approach Mr. Barnes through United States Senator Root, and also the aid of Mr. Murphy to former District Attorney Nicoll of New York for their political influence with members of this Court, and that was during his term of office.

The Governor could have denied the allegation of Duncan W. Peck, who claims to have been advised by the Governor to perjure himself. The records show an uncontradicted statement of Henry Morgenthau that he had repelled a suggestion of the Governor to withhold the truth in connection with his contribution.

Why did the Governor request Mr. Jacob H. Schiff to draw his check to the order of a third person? Why did he invariably ask for cash contributions instead of checks? These questions have not been answered. No attempt was made to disprove the receipt of $10,700 in checks and $26,700 in cash, $37,400 more than appeared in his sworn statement.

A recapitulation of transactions made by the Governor as furnished by the Managers reaches the sum total of nearly $100,000. How do we know but what the sum actually reached nearly a quarter of a million?

Mr. President, I am constrained to vote guilty.

The Clerk.— Senator Velte.

The President.— Senator, how say you, is the respondent guilty or not guilty as charged in the first article of impeachment?

Senator Velte.— Mr. President, I am in thorough accord with the view of the law as enunciated by Judges Miller and Hiscock and also by the facts as they have applied them in this case to the law.

My reasons will be more fully expressed in an opinion which I shall file with the Clerk. I do not care to argue any more at present.

The Clerk.— Senator Wagner.

The President.— Senator Wagner, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Wagner.— Mr. President, I am keenly sensible that this, in a manner, is the most serious moment in the history of the State of New York. As judges of the highest court in the land, and in the trial of the highest official in the state, I am conscious that we ought to bring to the occasion the most scrupulous thought and most impartial consideration.

As judges, I take it we must first decide whether the facts alleged in the Articles I, II and VI constitute, as a matter of law, valid grounds for impeachment.

I shall briefly state my reasons, at the risk of repetition and being somewhat tedious.

The first question of law which propounds itself relates to Articles I, II and VI. The respondent has placed in issue the legal sufficiency of these articles, urging principally that the acts alleged therein were pre-official, whereas impeachment would lie only for misconduct in office. I have come to the conclusion that this objection is not well taken.

Firstly, because, as an abstract proposition, misconduct in office need not be alleged; and,

Secondly, because the acts described in Articles I, II and VI are, in their nature, connected with the article.

The history of the constitutional provisions relative to impeachment clearly shows that the respondent's contention is an erroneous one. In the Constitution of 1777 we read:

> "The power of impeaching all officers of the state, for mal and corrupt conduct in their respective offices, be vested in the representatives of the People in the Assembly."

There can be no doubt, that, under that clause, impeachment was limited to misconduct in office.

The Constitution of 1821 provided that the Assembly shall have power of impeaching all civil officers of the State for mal and corrupt conduct in office and for high crimes and misdemeanors. Here impeachment may be instituted for official misconduct as under the Constitution of 1777, and in addition for high crimes and misdemeanors, whether official or not.

The Constitution of 1846 has this language:

> "The Assembly shall have the power of impeachment by a vote of a majority of all the members elected."

This also is the wording of the present Constitution. It will be noticed that the principal change effected was the omission of the limitation for mal and corrupt conduct in office and for high crimes and misdemeanors.

In the "Law of Constitutional Construction:"

> "It is a sound presumption that the omission of a limitation or qualification from the original Constitution was the intentional act of the framers of the amended Constitution and was designed to remove the limitation and thus correspondingly to enlarge the scope of the provision.
>
> "We cannot assign as a reason for the omission that the clause was forgotten or overlooked, or that it was disregarded without thought to the effect of its elimination."

In fact, the debates in the Constitutional Convention show that they were intentionally omitted. Every presumption of law and every presumption of logic compel the conclusion that the removal from the Constitutional provision of the limitation to the effect that impeachment would lie only for misconduct in office operates to give to the Assembly an unlimited power to impeach for misconduct in office or anterior to office. It is contended that there is no precedent of any case of impeachment where an official has ever been impeached for other than misconduct while actually in office.

But while that may be true, it is also true that there is no precedent or opinion rendered that under the law similar to our Constitutional provision, the Assembly cannot impeach for acts committed prior to the office from which the respondent is sought to be removed. If this reasoning be correct, and I am satisfied that it is, this Court cannot well sustain the respondent's objection.

I do not think it is necessary to go behind the different constitutional instruments, and to penetrate into the various offenses for the purpose of ascertaining the express reason and views of the distinguished delegates who were active in those conventions. An examination of the debates and argument, however, show very clearly the legal effect contended for by the managers of this trial was within the contemplation of those who, at the conventions, discussed the change. Aside from the inherent meaning of the constitutional provision, there is a persuasive precedent for the theory that im-

peachment can properly be directed against misconduct for the very office for which the respondent is sought to be removed. Judge Barnard was impeached and removed from his second term of office for acts committed in his first term, and I can see no distinction in principle between the offenses charged in the Barnard case and the misconduct alleged in this proceeding. I am aware of the provisions of section 12 of the Code of Criminal Procedure, which seems to limit impeachment to misconduct in office. But I cannot conceive of any maxim of legal construction which would justify the curtailment of a constitutional power by a legislative enactment. Even if such a construction were possible, is it not sound law to hold that section 12 of the Code of Criminal Procedure, enacted in 1891, was rendered nugatory by the subsequent readoption in 1894 of the absolute clause of the present Constitution?

By reason of all these considerations, here somewhat briefly expressed, the conclusion is inevitable that misconduct in office need not be charged in order to sustain an impeachment.

As a matter of fact, I am of opinion that Articles I and II actually do charge misconduct in office. Articles I and II charge the respondent in substance with having committed perjury in making the statement required by law of the moneys received by him as contributions to his campaign fund. In reference to the perjury charge, I cannot separate in my mind the acts of the respondent as the successful candidate and de facto governor, from the acts of the respondent as actual governor. These acts, although prior in time to actual incumbency, are not prior in nature, but are so essentially identified and connected with the office that they should, in all justice, and in all propriety, be deemed to be official acts. The respondent, by law, was required to file a true and complete statement of the finances of his candidacy. The statute was meant, primarily, to cover successful candidates, and it would seem that a successful candidate, doing certain acts connected with the office which he is about to take, ought to be held responsible for them, as official acts. If the respondent came to the threshold of the office with perjured credentials, even if it be only moral perjury, he cannot vindicate those credentials by crossing the threshold. He carries them with him, perjury and all, and I think it is the act of the official, as well as that of the candidate. It is certainly

such a disregard for morality and law as to clearly unfit him for the office of Governor.

If I am right in this process of reasoning, and in the conclusions which I have made, the general result is that the objections of the respendent are not well taken, and that Articles I and II set forth facts sufficient to constitute a cause for impeachment.

The objections made by the respondent to the sufficiency of these two articles, are the only serious questions of law which have arisen.

The next proposition is whether or not the evidence adduced on the part of the Managers, counterbalanced by that introduction by the respondent, justifies the conviction or the acquittal of the respondent. Whether proof by a preponderance of credible evidence or conviction beyond a reasonable doubt be required, the record will not permit me to find any other verdict but that of guilty Most of the evidence offered against the respondent stands uncontroverted, unimpeached and unassailed. The implausible and almost impossible testimony of the witness, Sarecky, is, indeed, the only attempt on the record to interpose a defense, and this attempt becomes abortive when due consideration is given to the contradictions, the evasions, the insincerity and the obvious prejudice which manifests itself in the testimony of this witness. The respondent, though the honor of the State was involved, did not appear to explain under oath these serious charges. The record of these proceedings is a one-sided story, and although I regret it, I am compelled to vote guilty.

The Clerk.— Senator Walters.

The President.— Senator, how say you, is the respondent guilty or not guilty, as charged, in the first article of impeachment.

Senator Walters.— Presiding Judge, I vote the respondent guilty, and beg leave to file an opinion later.

The Clerk.— Senator Wende.

The President.— Senator, how say you, is the respondent guilty or not guilty, as charged in the first article of impeachment?

Senator Wende.— Mr. President, I recognize the fact that anything that I might say here would be of little or no consequence

at this time. I am so far down the list that what is to be will be, whatever happens, I will avail myself of the opportunity of putting myself on this record before this court, registering my opinion. I vote not guilty.

The Clerk.— Judge Werner.

The President.— Judge Werner, how say you, is the respondent guilty or not guilty as charged in the first article of impeachment?

Judge Werner.— Mr. President and members of the court: During the many roll calls which have been had since this court was first convened, I have become painfully conscious that by the time my name is reached my vote is of much more consequence than my opinion, since nearly every question that has been discussed has been crystallized and disposed of. For that reason I have often remained silent, when I would feign have spoken, and I do not propose to depart from the rule of silence now, except to the extent of briefly stating my views upon this question, which, as I understand it, is the only question now before the court: Whether this respondent is guilty or not guilty under Article I?

If the question of his guilt were dependent entirely upon the facts which have been established beyond dispute I should, of course, join with those who have declared this respondent guilty, because we know that he has committed acts which are so morally indefensible that they can hardly be described in language of judicial air and form; but there is another part of this question: Assuming the facts, as they have been stated and proved, is he legally guilty of any offence for which he is impeachable under Article I? And that depends wholly upon the view which we take of the Constitution.

Now, what is the constitutional argument? Judge Miller has stated it very brilliantly and forcibly for the one side; the presiding officer, Judge Bartlett and Judge Chase have stated it on the other side. It may be summarized in a very few words. The argument on the one hand is that because the Constitution of 1877 and 1821 refer to certain enumerated grounds for impeachment, and those alone, and the Constitution of 1846 eliminated those grounds, therefore, there is now no limit upon the power of the Assembly to impeach.

What is the other side of the argument? That in 1881 the Legislature of this State declared that the court, for the trial of impeachment, has power to try impeachments when presented by the Assembly, of all civil officers of the State, except justices of the peace, justices of justice courts and justices of police courts, and their clerks, for wilful and corrupt misconduct in office.

That is a legislative declaration of what the Constitution was which immediately preceded the adoption of this statute, and it is in effect a re-enactment of the statute which reaches back to when the Constitution of 1846 was in force and before that. My view is that this is not a question which can be disposed of with dogmatic certainty. I have grave doubts whether the argument on one hand or the other is strictly tenable, and for that reason I am constrained to give this respondent the benefit of the doubt, and upon this particular article I vote not guilty.

The Clerk.— Senator Wheeler.

The President.— Senator, how say you, is the respondent guilty or not guilty as charged in the first article of impeachment?

Senator Wheeler.— Mr. Presiding Judge, I vote not guilty.

The Clerk.— Senator White.

The President.— Senator White, how say you, is the respondent guilty or not guilty as charged in the first article of impeachment?

Senator White.— Guilty.

The Clerk.— Senator Whitney.

The President.— Senator Whitney, how say you?

Senator Whitney.— Mr. Presiding Judge, I believe the charges in article I have been sustained, but I am convinced by the opinion of the learned presiding judge that you cannot impeach a person for crimes or offences committed before taking office.

I therefore am compelled to vote not guilty.

The Clerk.— Senator Wilson.

The President.— Senator Wilson, how say you?

Senator Wilson.— Mr President, I am somewhat like Judge Werner; I believe my vote is of more importance than the argument. Realizing that I have to cast the vote as to this article, I realize the responsibility of that vote, and, feeling as I do, I vote guilty.

The President.— The Clerk will announce the results.

The Clerk.— Guilty, 39; not guilty, 18.

Senator Thompson.— I move that we take a recess on the roll until 10 o'clock to-morrow morning.

(Motion seconded.)

The President.— Does anyone want to say anything on the subject?

Senator Brown.— What is the pending motion, Mr. President?

The President.— The motion is that we now adjourn until 10 o'clock to-morrow morning.

Senator Simpson.— I move an amendment to that motion, until 10:30 o'clock, in view of the fact that the Senate meets at 10 o'clock.

The President.— Do you accept that?

Senator Thompson.— Yes.

Senator Simpson.— The amendment is accepted.

Senator Healy.— I move we take a recess for one hour.

Senator Simpson.— I refuse to accept the amendment.

The President.— Possibly you had better talk among yourselves instead of debating this and then call for the vote.

Senator Carswell.— Before the Court considers any motion on the subject of adjournment I believe that under the rules the Clerk should announce the result of the vote whether in point of fact the respondent has been adjudged guilty or not guilty.

The President.— It was announced by the Clerk as 39 in the affirmative and 18 not guilty. Of course, under the Constitution, the respondent is convicted under that article.

Senator Healy.— What was your amendment?

Senator Healy.— I withdraw my amendment.

Senator Thompson.— I offer a substitute as follows, that at 7 o'clock we take a recess under the rule until to-morrow at 10:30.

(Motion seconded.)

Judge Hiscock.— It seems to me we cannot fix an arbitrary hour in that way. Suppose when 7 o'clock arrives if we were in the midst of a vote on some particular article. No one will want to adjourn then.

The President.— The Presiding Judge will assume he is to go on until any article is disposed of, regardless of time.

Senator McClelland.— It seems to me we are about entering here upon an experiment. If you start to adjourn arbitrarily at 7 o'clock —

The President.— No, we are not doing that. Is the Presiding Judge's construction of Senator Thompson's motion correct?

Senator Wagner.— I suggest that Senator Thompson withdraw his motion.

The President.— That if we are engaged in calling the roll on an article and no members of the Court wish to make an address at any length, we proceed to the end of the roll.

Senator Thompson.— I withdraw the motion, Mr. President.

Judge Werner.— That simply leads us to go on for the present.

The President.— Read the second article.

The Clerk.— That the said William Sulzer, now Governor of the State of New York, then being Governor-elect of said State for the term beginning January 1, 1913, he having been elected at the general election held in said State on the 5th day of November, 1912, was required by the statutes of the State then in force to

file in the office of the Secretary of State within ten days after his said election as aforesaid, an itemized statement showing in detail all the moneys contributed or expended by him, directly or indirectly, by himself, or through any other person, in aid of his election, giving the names of the various persons who received such moneys, the specific nature of each item and the purpose for which it was expended and contributed; and was further required to attach to such statement an affidavit, subscribed and sworn to by him, such candidate, setting forth, in substance, that the statement thus made was in all respects true and that the same was a full and detailed statement of all moneys so contributed or expended by him, directly or indirectly, by himself, or through any other person, in aid of his election.

That, being thus required to file such statement, and attach thereto such affidavit, on or about the 13th day of November, 1912, the said William Sulzer, unmindful of his duty under such statutes, made and filed in the office of the Secretary of State what purported to be a statement made in conformity with the provisions of the statute above set forth, in which statement he stated and set forth as follows, to wit:

That all the moneys received, contributed or expended by said Sulzer, directly or indirectly, by himself or through any other person, as the candidate of the Democratic party for the office of Governor of the State of New York, in connection with the general election held in the State of New York, on the 5th day of November, 1912, were receipts from sixty-eight contributors, aggregating five thousand four hundred and sixty ($5,460) dollars, and ten items of expenditure aggregating seven thousand seven hundred and twenty-four and nine one-hundredths ($7,724.09) dollars, the detailed items of which were fully set forth in said statement so filed as aforesaid.

That attached to such statement thus made and filed by him as aforesaid was an affidavit, subscribed and sworn to by said William Sulzer, stating that said statement was in all respects true and that the same was a full and detailed statement of all moneys received or contributed or expended by him, directly or indirectly, by himself or through any other person, in aid of his election.

That said statement thus made and filed by said William Sulzer,

as aforesaid, was false, and was intended by him to be false and an evasion and violation of the statutes of the State and the same was made and filed by him wilfully, knowingly and corruptly, being false in the following particulars, to wit:

It did not contain the contributions that had been received by him, and which should have been set forth in said statement, to wit:

Jacob Schiff	$2,500
Abram I. Elkus	500
William F. McCoombs	500
Henry Morgenthau	1,000
Theodore W. Myers	1,000
John Lynn	500
Lyman A. Spaulding	100
Edward F. O'Dwyer	100
John W. Cox	300
Frank S. Strauss Co.	1,000
John T. Dooling	1,000

That said affidavit thus subscribed and sworn to by said William Sulzer was false and was corruptly made by him.

That in making and filing such false statement as aforesaid the said William Sulzer did not act as required by law, but did act in express violation of the statutes of the State and wrongfully, knowingly, wilfully and corruptly, and in making said affidavit as aforesaid, the said William Sulzer was guilty of wilful and corrupt perjury and of a violation of section 1620 of the Penal Law of the State; and, thereafter, having taken the oath as Governor, and proceeded to perform the duties thereof, the said false statement and affidavit thus made and filed by him caused great scandal and reproach to the Governor of the State of New York.

The President.— Call the roll, Mr. Clerk.

The Clerk.— Senator Argetsinger.

The President.— Senator, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Argetsinger.— Guilty.

The Clerk.— Judge Bartlett.

The President.— Judge Bartlett, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Judge Bartlett.— Not guilty, on the ground that the acts charged in this article were not committed after the respondent took office.

The Clerk.— Senator Blauvelt.

The President.— How say you, Senator Blauvelt, is the respondent guilty or not guilty, as charged in the second article of the impeachment?

Senator Blauvelt.— Mr. President, this article charges the respondent with having filed a false statement, and having attached thereto a false affidavit. The statement which he made and filed was admittedly false. The certificate attached to the statement and sworn to by the respondent was also concededly false. It is claimed that because section 776 of the Penal Law does not require a candidate to make oath as to contributions received by him the respondent committed no statutory crime in falsely swearing to such contributions in his statement and that is undoubtedly true, but, measured by moral standards, the offense which he committed was just as great. When he signed that affidavit he knew that the statement he was making was false, and that he was not disclosing all of the contributions which had been received by him in aid of his election.

At the time he made the affidavit, he believed that the statutes of the State required him to disclose contributions received by him, else why did he not correct the affidavit before taking the oath? The intent to deceive was fixed in his mind at the time. He must have felt at least that he was committing perjury in so swearing. Can he, therefore, escape condemnation? I think not.

For the reason, therefore, that the statement was known to be false to the respondent, and for the further reason that the moral crime committed by him at a time and under such circumstances as must have led him to believe he was committing a statutory

offense, and in view of the fact that in my opinion, it is not necessary to hold the respondent guilty of any statutory offense in order to show his unfitness to hold public office, I vote the respondent guilty under this article.

The Clerk.— Senator Boylan.

The President.— Senator, how say you, is the respondent guilty or not guilty as charged in the second article of impeachment?

Senator Boylan.— Mr. President, I would ask that the remarks that I made in voting on the first article apply with equal force and effect to this my vote on the second article. To my mind I find the respondent guilty as charged in the second article of impeachment.

The Clerk.— Senator Brown.

The President.— Senator Brown, how say you, is the respondent guilty or not guilty as charged in the second article of impeachment?

Senator Brown.— For the reason stated by Senator Blauvelt, guilty.

The Clerk.— Senator Bussey.

The President.— Senator, how say you, is the respondent guilty or not guilty as charged in the second article of impeachment?

Senator Bussey.— Guilty, your Honor.

The Clerk.— Senator Carroll.

The President.— Senator, how say you, is the respondent guilty or not guilty as charged in the second article of impeachment?

Senator Carroll.— Guilty.

The Clerk.— Senator Carswell.

The President.— Senator Carswell, how say you, is the respondent guilty or not guilty as charged in the second article of impeachment?

Senator Carswell.— Mr. President, I do not find that the respondent has committed the legal crime of perjury, but I do find

under this article that it charges and the proof sustains an impeachable offence. I find him guilty.

The Clerk.— Judge Chase.

The President.— Judge Chase, how say you, is the respondent guilty or not guilty as charged in the second article of impeachment?

Judge Chase.— For the reasons stated by me when I answered the question submitted under article I, I answer under this article, not guilty.

The Clerk.— Senator Coats.

The President.— Senator Coats, how say you, is the respondent guilty or not guilty as charged in the second article of impeachment?

Senator Coats.— For the reasons stated by Senator Blauvelt, and for the further reason, that I consider the acts committed by the respondent as recited in this article to be in furtherance of the policy followed by him of concealment. I vote him guilty.

The Clerk.— Judge Collin.

The President.— Judge Collin, how say you, is the respondent guilty or not guilty as charged in the second article of impeachment?

Judge Collin.— Presiding Judge, for the reasons stated by Senator Blauvelt and the reasons stated in the written statement of my reasons for voting under Article I as I did, I find him guilty, and vote him guilty.

The Clerk.— Judge Cuddeback.

The President.— Judge Cuddeback, how say you, is the respondent guilty or not guilty, as charged in the second article of the impeachment.

Judge Cuddeback.— Following the vote which I gave on the first article, I must vote guilty on this article.

The Clerk.— President Judge Cullen.

The President.— I vote not guilty, for the reasons that induced me to vote not guilty on the first article of impeachment.

The Clerk.— Senator Cullen.

The President.— How say you, Senator, is the respondent guilty or not guilty, as charged, in the second article of impeachment?

Senator Cullen.— Guilty.

The Clerk.— Senator Duhamel.

The President.— Senator Duhamel, how say you, is the respondent guilty or not guilty as charged in the second article of impeachment?

Senator Duhamel.— Mr. President, I received from the secretary of state last fall a blank to be filled out with a report as to my receipts and expenditures in compliance with section 776 of the Penal Code. I endeavored to comply with this section, and somehow sent it to the county clerk, somewhere there; the recording clerk, who was a neighbor and constituent of mine, called me up and told me that my report was incorrect and informal, and he instructed me how to make out a report in compliance with section 542 of the Corrupt Practices Act, and he would then receive it. I did so, and the statement was placed on file. I am confident that if Governor Sulzer had had someone in the secretary of state's office sufficiently friendly to him to instruct him as I was instructed in regard to the making out of the report, that he would not have been impeached under this section, and I vote not guilty.

The Clerk.— Senator Emerson.

The President.— Senator Emerson, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Emerson.— Not guilty.

The Clerk.— Senator Foley.

The President.— Senator Foley, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Foley.— Guilty, upon the ground given by Senator Blauvelt.

The Clerk.— Senator Frawley.

The President.— Senator Frawley, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Frawley.— Guilty.

The Clerk.— Senator Godfrey.

The President.— Senator Godfrey, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Godfrey.— Guilty.

The Clerk.— Senator Griffin.

The President.— Senator Griffin, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Griffin.— Guilty.

The Clerk.— Senator Heacock.

The President.— Senator Heacock, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Heacock.— Not guilty.

The Clerk.— Senator Healy.

The President.— Senator Healy, how say you, is the respondent guilty or not guilty as charged in the second article of impeachment?

Senator Healy.— Guilty.

The Clerk.— Senator Heffernan.

The President.— Senator Heffernan, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Heffernan.— Guilty.

The Clerk.— Senator Herrick.

The President.— Senator Herrick, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Herrick.— On the grounds which I gave for my vote for article I, and on the further ground that I do not believe the acts charged in article II constitute perjury, I vote not guilty.

The Clerk.— Senator Hewitt.

The President.— Senator Hewitt, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Hewitt.— Guilty.

The Clerk.— Judge Hiscock.

The President.— Judge Hiscock, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Judge Hiscock.— I think the reasons which led me to vote guilty on the first article, logically lead me to vote guilty on the second article, which I do.

The Clerk.— Judge Hogan.

The President.— Judge Hogan, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Judge Hogan.— For the reasons which prompted me to vote as I did on the first article, and yet finding that the respondent is not guilty of the crime of perjury, I vote guilty.

The Clerk.— Senator McClelland.

The President.— Senator McClelland, how say you, is the respondent guilty or not guilty as charged in the second article of the impeachment?

Senator McClelland.— Presiding Judge, for the reasons that

I presented in explaining my vote on article 1, and upon the grounds presented by Judges Collin and Cuddeback, and Judge Hiscock, Judge Hogan and Judge Miller, in support of their vote, in support of the guilt of the respondent under article 1, I feel constrained to vote guilty upon article 2.

The Clerk.— Senator McKnight.

The President.— Senator McKnight, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator McKnight.— Not guilty.

The Clerk.— Senator Malone.

The President.— Senator Malone, how say you, is the respondent guilty or not guilty, as charged in the second article of the impeachment?

Senator Malone.— Mr. Presiding Judge, for the same reasons given by me in voting guilty on article 1, I also vote guilty on this article.

The Clerk.— Judge Miller.

The President.— Judge Miller, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Judge Miller.— For the reasons stated by Senator Blauvelt and those stated by me with respect to article 1, I vote guilty.

The Clerk.— Senator Murtaugh.

The President.— Senator, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Murtaugh.— Mr. President, I do not find the respondent guilty of perjury. I think the respondent is guilty of the impeachment charge. I vote guilty.

The Clerk.— Senator O'Keefe.

The President.— How say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator O'Keefe.— Not guilty.

The Clerk.— Senator Ormrod.

The President.— How say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Ormrod.— I find him guilty.

The Clerk.— Senator Palmer.

The President.— Senator Palmer, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Palmer.— Not guilty.

The Clerk.— Senator Patten.

The President.— Senator, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Patten.— Mr. President, I concur in the opinion of Senator Carswell, and hold him guilty.

The Clerk.— Senator Peckham.

The President.— Senator, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Peckham.— Not guilty.

The Clerk.— Senator Pollock.

The President.— Senator Pollock, how say you, is the respondent guilty or not guilty as charged in the second article of impeachment?

Senator Pollock.— Upon the grounds stated by Senator Blauvelt, I vote guilty.

The Clerk.— Senator Ramsperger.

The President.— Senator, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Ramsperger.— Guilty.

The Clerk.— Senator Sage.

The President.— Senator Sage, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Sage.— For the reasons stated by Senator Blauvelt, guilty.

The Clerk.— Senator Sanner.

The President.— Senator, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Sanner.— Guilty.

The Clerk.— Senator Seeley.

The President.— Senator, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Seeley.— Not guilty.

The Clerk.— Senator Simpson.

The President.— Senator Simpson, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Simpson.—Mr. President, for the reasons stated on the motion, upon the Article One, and for the further reason that even though this was not legal perjury, in my opinion, it was an impeachable offense, and therefore, I vote the respondent guilty under Article II.

The Clerk.— Senator Stivers.

The President.— Senator, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment.

Senator Stivers.— Not guilty.

The Clerk.— Senator Sullivan.

The President.— Senator Sullivan, how say you, is the respond-

ent guilty or not guilty, as charged in the second article of impeachment?

Senator Sullivan.— Guilty.

The Clerk.— Senator Thomas.

The President.— Senator Thomas, how say you, is the respondent guilty or not guilty as charged in the second article of impeachment?

Senator Thomas.— Not guilty.

The Clerk.— Senator Thompson.

The President.— Senator Thompson, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Thompson.— Guilty.

The Clerk.— Senator Torborg.

The President.— Senator, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Torborg.— Guilty, in accordance with my vote on the first article.

The Clerk.— Senator Velte.

The President.— Senator, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Velte.— I believe that Article II is an impeachable offence, but I do not believe that the defendant committed technical perjury. I vote guilty.

The Clerk.— Senator Wagner.

The President.— Senator Wagner, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Wagner.— For the reasons given by Senator Blauvelt and the reasons I gave in support of my vote on the first article, I vote guilty.

The Clerk.— Senator Walters.

The President.— Senator, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Waters.— Presiding Judge, I vote guilty.

The Clerk.— Senator Wende.

The President.— Senator Wende, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Wende.— For the reason that the article charges perjury and no perjury is proven, I vote not guilty.

The Clerk.— Judge Werner.

The President.— Judge Werner, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Judge Werner.— Not guilty.

The Clerk.— Senator Wheeler.

The President.— Senator, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Wheeler.— Not guilty.

The Clerk.— Senator White.

The President.— Senator, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator White.— Guilty.

The Clerk.— Senator Whitney.

The President.— Senator, how say you, is the respondent guilty or not guilty, as charged in the second article of impeachment?

Senator Whitney.— Mr. President, for the reasons stated when I voted on Article 1 and for the further reason that I do not find the respondent guilty of legal perjury, I vote not guilty.

The Clerk.— Senator Wilson.

The President.— Senator, how say you, is the respondent guilty or not guilty, as charged by the second article of impeachment?

Senator Wilson.— Mr. President, I vote guilty.

The Clerk.— Those voting guilty 39; not guilty 18.

The President.— Clerk, read the third article of impeachment.

The Clerk.— (Reading): That the said William Sulzer, then being the Governor of the State of New York, unmindful of the duties of his office, and in violation of his oath of office, was guilty of mal and corrupt conduct in his office as such Governor of the State and was guilty of bribing witnesses, and of a violation of section 2440 of the Penal Law of said State, in that, while a certain committee of the Legislature of the State of New York named by concurrent resolution of said Legislature to investigate into, ascertain, and report at an extraordinary session of the Legislature then in session, upon all expenditures made by any candidate voted for at the last preceding election by the electors of the whole State, and upon all statements filed by and on behalf of any such candidate for moneys or things of value received or paid out in aid of his election, and their compliance with the present requirements of law relative thereto,— while such committee was conducting such investigation, and had full authority in the premises, he, the said William Sulzer, in the months of July and August, 1913, fraudulently induced one Louis A. Sarecky, one Frederick L. Colwell, and one Melville B. Fuller, each, to withhold true testimony from said committee, which testimony it was the duty of said several persons named to give to said committee when called before it, and which, under said inducements of said William Sulzer, they and each of them refused to do.

That, in so inducing such witnesses to withhold such true testimony from said Committee, the said William Sulzer acted wrongfully and willfully and corruptly, and was guilty of a violation of the statutes of the State and of a felony, to the great scandal and reproach of the said Governor of the State of New York.

Senator Wagner.— Presiding Judge, I would like to inquire

whether upon this roll call we could not be recorded without going through the formality. I think we are of one opinion.

The President.— What is the opinion? That it is substantial or it is not?

Senator Wagner.— It is not, I understood in our private consultation.

The President.— That was only informal, gentlemen, by way of discussion.

Senator Wagner.— I wanted to save the time of the court and a lot of labor for the presiding judge.

The President.— I will not call it, but each gentleman will just say guilty or not guilty, as the clerk calls his name. That will expedite matters and we will comply with the law.

The Clerk.— Senator Argetsinger.

Senator Argetsinger.— Not guilty.

The Clerk.— Judge Bartlett.

Judge Bartlett.— Not guilty.

The Clerk.— Senator Blauvelt.

Senator Blauvelt.— Not guilty.

The Clerk.— Senator Boylan.

Senator Boylan.— Not guilty.

The Clerk.— Senator Brown.

Senator Brown.— Not guilty.

The Clerk.— Senator Bussey.

Senator Bussey.— Not guilty.

The Clerk.— Senator Carroll.

Senator Carroll.— Not guilty.

The Clerk.— Senator Carswell.

Senator Carswell.— Not guilty.

The Clerk.— Judge Chase.

Judge Chase.— Not guilty.

The Clerk.— Senator Coats.

Senator Coats.— Not guilty.

The Clerk.— Judge Collin.

Judge Collin.— Not guilty.

The Clerk.— Judge Cuddeback.

Judge Cuddeback.— Not guilty.

The Clerk.— Judge Cullen, President.

The President.— Not guilty.

The Clerk.— Senator Cullen.

Senator Cullen.— Not guilty.

The Clerk.— Senator Duhamel.

Senator Duhamel.— Not guilty.

The Clerk.— Senator Emerson.

Senator Emerson.— Not guilty.

The Clerk.— Senator Foley.

Senator Foley.— Not guilty.

The Clerk.— Senator Frawley.

Senator Frawley.— Not guilty.

The Clerk.— Senator Godfrey.

Senator Godfrey.— Not guilty.

The Clerk.— Senator Griffin.

(No response).

The Clerk.— Senator Heacock.

Senator Heacock.— Not guilty.

The Clerk.— Senator Healy.

Senator Healy.— Not guilty.

The Clerk.— Senator Heffernan.

Senator Heffernan.— Not guilty.

The Clerk.— Senator Herrick.

Senator Herrick.— Not guilty.

The Clerk.— Senator Hewitt.

Senator Hewitt.— Not guilty.

The Clerk.— Judge Hiscock.

Judge Hiscock.— Not guilty.

The Clerk.— Judge Hogan.

Judge Hogan.— Not guilty.

The Clerk.— Senator McClelland.

Senator McClelland.— Not guilty.

The Clerk.— Senator McKnight.

Senator McKnight.— Not guilty.

The Clerk.— Senator Malone.

(No response).

The Clerk.— Judge Miller.

Judge Miller.— Not guilty.

The Clerk.— Senator Murtaugh.

Senator Murtaugh.— Not guilty.

The Clerk.— Senator O'Keefe.

Senator O'Keefe.— Not guilty.

The Clerk.— Senator Ormrod.

Senator Ormrod.— Not guilty.

The Clerk.— Senator Palmer.

Senator Palmer.— Not guilty.

The Clerk.— Senator Patten.

Senator Patten.— Not guilty.

The Clerk.— Senator Peckham.

Senator Peckham.— Not guilty.

The Clerk.— Senator Pollock.

Senator Pollock.— Not guilty.

The Clerk.— Senator Ramsperger.

Senator Ramsperger.— Not guilty.

The Clerk.— Senator Sage.

Senator Sage.— Not guilty.

The Clerk.— Senator Sanner.

Senator Sanner.— Not guilty.

The Clerk.— Senator Seeley.

Senator Seeley.— Not guilty.

The Clerk.— Senator Simpson.

Senator Simpson.— Not guilty.

The Clerk.— Senator Stivers.

Senator Stivers.— Not guilty.

The Clerk.— Senator Sullivan.

Senator Sullivan.— Not guilty.

The Clerk.— Senator Thomas.

Senator Thomas.— Not guilty.

The Clerk.— Senator Thompson.

(No response).

The Clerk.— Senator Torborg.

Senator Torborg.— Not guilty.

The Clerk.— Senator Velte.

Senator Velte.— Not guilty.

The Clerk.— Senator Wagner.

Senator Wagner.— Not guilty.

The Clerk.— Senator Walters.

Senator Walters.— Not guilty.

The Clerk.— Senator Wende.

Senator Wende.— Not guilty.

The Clerk.— Judge Werner.

Judge Werner.— Not guilty.

The Clerk.— Senator White.

Senator White.— Not guilty.

The Clerk.— Senator Whitney.

Senator Whitney.— Not guilty.

The Clerk.— Senator Wilson.

Senator Wilson.— Not guilty.

Senator Griffin.— Mr. President.

The President.— Senator Griffin.

Senator Griffin.— I ask that my name be called.

The Clerk.— Senator Griffin.

Senator Griffin.— Not guilty.

Senator Malone.— Mr. President.

The President.— Senator Malone.

Senator Malone.— I would like to have my name called.

The Clerk.— Senator Malone.

Senator Malone.— Not guilty.

Senator Thompson.— Mr. President.

The President.— Senator Thompson.

Senator Thompson.— I would like to have my name called.

The Clerk.— Senator Thompson.

Senator Thompson.— Not guilty.

The Clerk.— 57, not guilty.

The President.— Read the fourth article.

The Clerk.— That the said William Sulzer, then being the Governor of the State of New York, unmindful of the duties of his office, and in violation of his oath of office, was guilty of mal and corrupt conduct in his office as such Governor of the State, and was guilty of suppressing evidence and of violation of section 814 of the Penal Law of said State, in that, while a certain Committee of the Legislature of the State of New York named by a concurrent resolution of said Legislature to investigate into, ascertain and report at an extraordinary session of the Legislature, then in session, all expenditures made by any candidate voted for at the last preceding election by the electors of the whole State, and upon all statements filed by and on behalf of any such candidate for moneys or things of value received or paid out in aid of his election, and their compliance with the present requirements of law relative thereto — while such committee as conducting such investigation and had full authority in the premises, he, the said William Sulzer, practised deceit and fraud and used threats and menaces, with intent to prevent said committee and the people of the State from procuring the attendance and testimony of certain witnesses, to wit, Louis A. Sarecky, Frederick L. Colwell and Melville B. Fuller, and all other persons, and with intent to prevent said persons named, and all other persons, severally, they or many of them having in their possession certain books, papers and other things which might or would be evidence in the proceed-

ings before said committee, and to prevent such persons named, and all other persons, they, severally, being cognizant of facts material to said investigation being had by said committee, from producing or disclosing the same, which said several witnesses named, and many others, failed and refused to do.

That, in thus practising deceit and fraud and using threats and menaces as, and with the intent, aforesaid, and upon the persons before named, the said William Sulzer acted wrongfully and wilfully and corruptly and was guilty of a misdemeanor, to the great scandal and reproach of the Governor of the State of New York.

The President.— Call the roll.

The Clerk.— Senator Argetsinger.

The President.— Senator Argetsinger, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Argetsinger.— Guilty.

The Clerk.— Judge Bartlett.

The President.— Judge Bartlett, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Judge Bartlett.— The court having determined that this article is sufficient in form to justify a consideration of the Peck incident as a substantive offence, and that offence having been proved without any substantial denial or, indeed, any denial whatever by the respondent in person, I feel constrained to vote guilty on this article.

The Clerk.— Senator Blauvelt.

The President.— Senator Blauvelt, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Blauvelt.— Guilty.

The Clerk.— Senator Boylan.

The President.— Senator Boylan, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Boylan.— Guilty, Mr. President.

The Clerk.— Senator Brown.

The President.— Senator Brown, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Brown.— Mr. President, very briefly, in my opinion Article IV may be fairly interpreted as broad enough in terms to justify treating the evidence of Morgenthau and Peck as the basis of a substantive charge. Stripped of verbiage and casuistry, the article would read:

> "That the said William Sulzer, then being Governor of the State of New York, unmindful of the duties of his office and in violation of his oath of office, was guilty of mal and corrupt conduct in his office as such Governor of the State, and was guilty of supressing evidence to the injury of the State."

And this article is sustained by the uncontradicted testimony of Morgenthau and Peck that he asked them not to tell the truth about the contributions they had made to him. This substantial proof of the broad allegation cannot be obliterated because it justifies a much more serious charge or charges, to wit: The subornation of perjury and the use of a threat to prevent the giving of testimony. I am unable to concur with those members of this Court who are of the opinion that the Governor committed the offenses before he became Governor alleged in the articles of impeachment, but are unable to vote for impeachment, because acts committed before taking office are not within the purview of the Constitution, who are of the opinion that the Governor in committing the acts testified to by Morgenthau, Peck and Ryan committed impeachable offenses in office for which he should be removed from office, but cannot vote for conviction because the language of Article IV is not broad enough to enable them to con-

sider the charges; and who declines to be bound by the ruling of the Court that Article IV is broad enough to consider such testimony as the basis of substantial charges.

Courses of reasoning leading to such an absurd conclusion must be reexamined. Sound reasoning does not produce such a conclusion. If it prevails here to-day, it will be the duty of the Assembly to convene to-morrow and formulate articles of impeachment based upon the opinions of judges who have voted for acquittal. Such a result would bring discredit upon the administration of justice. I vote guilty.

The Clerk.— Senator Bussey.

The President.— Senator Bussey, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment.

Senator Bussey.— Mr. President, as charged in article IV I vote guilty.

The Clerk.— Senator Carroll.

The President.— Senator Carroll, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Carroll.— Guilty.

The Clerk.— Senator Carswell.

The President.— Senator Carswell, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Carswell.— Upon the grounds stated by Senator Brown, eliminating the reference to the witnesses Morgenthau and Ryan, I vote guilty.

The Clerk.— Judge Chase.

The President.— Judge Chase, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Judge Chase.— I find that the testimony of Duncan W. Peck is true.

I also find that the relation of the parties to the conversation related by Peck and the circumstances surrounding the parties, as shown by the testimony received in this proceeding, show the respondent not only asked Peck to commit perjury, but by menace sought to prevent him from disclosing the facts stated in the testimony given in this court relating to his contribution to the respondent's campaign expenses.

Because of such findings of fact, and for the reasons stated by Judge Bartlett, I vote guilty.

The Clerk.— Senator Coats.

The President.— Senator Coats, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment.

Senator Coats.— For reasons stated by Judge Chase and Senator Brown, I vote guilty.

The Clerk.— Judge Collin.

The President.— Judge Collin, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Judge Collin.— Guilty.

The Clerk.— Judge Cuddeback.

The President.— Judge Cuddeback, how say you, is the respondent guilty or not guilty as charged in the fourth article of impeachment?

Judge Cuddeback.— The testimony of the witness Peck as to the conversation between him and the respondent had at the Executive Chamber in July last shows, if true, attempted subornation of perjury on the part of the Governor. Peck's testimony was admitted without objection and without limitation so far as I can find and it stands uncontradicted in the case. The importance of the testimony was accentuated by the Court in calling the attention of counsel to it specifically and the question whether

it could be considered as affording substantive ground of impeachment under article four was debated for a whole day. No application was made for an opportunity to offer further evidence upon the subject of the conversation.

It seems to me that if Peck's testimony can fairly be considered under article four of the charges of impeachment it ought to have the force and effect to which it is plainly entitled. The attempt has been made to limit article four to offenses included in section 814 of the Penal Law. If it be true, as it undoubtedly is, that an impeachable offense need not necessarily be an offense against the Penal Law, then article four ought not to be tested by comparison with any statute. Article four would not be good as an indictment under section 814, and it is a fact that none of the articles of impeachment are drawn with the care and precision which courts require in the preparation of indictments.

The language in section 814 should be liberally construed and be extended to any offense fairly within its provisions. If article four named Duncan W. Peck specifically as one of the persons upon whom the Governor attempted to exercise the influence which the article charges, it would be plain that proof under that article such as is furnished by the testimony of Peck would be sufficient and the fact that it is not in all respects the same as the charge would be regarded as an immaterial variance. It is admitted that the words " all other persons " contained in article four are sufficient to include any individuals besides those mentioned by name in the article and to render admissible proof that the Governor sought to influence such other individuals.

The article charges that the respondent used deceit and fraud with the intent to prevent the Frawley Committee from procuring the attendance and testimony of certain persons and with intent to prevent such persons from disclosing their evidence before the Committee. The testimony of Peck it is admitted meets all these specifications of article four except that which charges deceit and fraud. I think it is not straining the testimony of Peck to say that it does show deceit and fraud, and if it does not, in view of the liberal interpretation to be given to the article that the variance between the proof and the charge is immaterial and should be disregarded.

I am anxious to do no wrong to the respondent and anxious to do no wrong to this court, but it would be a gross miscarriage of justice to find, as we must, that this gross offense has been committed and also find that the case must go off on a question of pleading. I do not believe this court is so pitiably weak as that conclusion would show.

I vote guilty.

The Clerk.— President Judge Cullen.

The President.— I vote not guilty. Ordinarily, I would subordinate of course any feeling of myself or judgment of my own on questions of a pleading or a procedure to those in the majority of the court, but the question here involved is in my judgment, however mistaken, too substantial for a man to vote any way except in accordance with his judgment, and I have simply this to say, because this article rests as I suppose on what may be termed the Peck incident or conversation. The so-called Peck incident, his conversation with the respondent, in which he testified that the latter said to him to deny or forget the contribution from the witness to the Governor, is not charged in the impeachment articles as a substantive offense. That this court is without power to amend the impeachment articles is to me absolutely certain, for the Constitution vests the exclusive power to impeach in the Assembly and hence, the respondent cannot be tried upon any charges except those the Assembly sees fit to present. The name of Peck is not mentioned in the article and a transaction with him can be deemed included in the article only under the designation of "other persons." The article is not addressed to such an occurrence. There is no evidence of any deceit or fraud, and to construe what passed between the respondent and Peck as a threat to remove the latter is to substitute suspicion for proof, vagaries of imagination for evidence. The Court of Appeals in the Nowack case (166 N. Y. 433) as evidence to discredit the defense, not as a substantive charge. The point here urged may be criticized as technical, but if so I hope that technicality will always be respected to the extent of preventing the trial of a man for one offense and convicting him of another. Far better, the Assembly, if it deem wise, should present new articles of impeachment and the State be put to the expense of another trial rather

than a precedent should be set for what seems a violation of the ordinary principles of justice. Forms are often necessary to observe to protect the substance that lies behind them. Where they are not observed in substantial matters, law degenerates into oppression on the one, or anarchy on the other.

The President.— Call the next.

The Clerk.— Senator Cullen.

The President.— How say you, Senator, is the respondent guilty or not guilty as charged in the fourth article of impeachment?

Senator Cullen.— Guilty, your Honor.

The Clerk.— Senator Duhamel.

The President.— Senator Duhamel, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Duhamel.— Mr. President, I am impressed with the opinion of the Presiding Judge and vote not guilty.

The Clerk.— Senator Emerson.

The President.— Senator Emerson, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Emerson.— Guilty.

The Clerk.— Senator Foley.

The President.— Senator Foley, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Foley.— Presiding Judge, I vote guilty under this article, and I desire to call attention to the fact that a reply was made on behalf of the respondent by his counsel to this particular charge as covering the Peck and Morgenthau testimony. In one case it was said at page 1569 of the record:

> "Now, there are a couple of others not charged in the indictment, but it shows you the atmosphere that was attempted to be created in this case."

And then came an explanation or a comment not only upon the evidence as given by Peck but somewhat extraneously upon the motives for giving that vote.

I hold that the evidence shows a corrupt and continuous disposition by the respondent to suppress testimony in the cases of Sarecky, Peck and Morgenthau. This is especially clear from his attempts to influence Morgenthau the very day he returned from Europe. I vote guilty.

The Clerk.— Senator Frawley.

The President.— Senator Frawley, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Frawley.— Guilty.

The Clerk.— Senator Godfrey.

The President.— Senator Godfrey, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Godfrey.— I vote guilty.

The Clerk.— Senator Griffin.

The President.— Senator, how say you, guilty or not guilty, as charged in the fourth article of impeachment?

Senator Griffin.— Mr. President, I agree with the view of Judge Bartlett, that the misconduct of the respondent with respect to Peck and as testified to by Peck, is established and, for that reason, I consider that Article IV is sufficient to include the testimony of Peck. It is not, in my opinion, however, sufficient to include the misconduct testified to by Morgenthau and Ryan.

The transaction between Peck and the respondent took place after July 13, 1913. Pages 778 and 779 of the record.

The transaction between Morgenthau and the respondent took place on September 2d or 3d. Page 758 of the record.

The transaction as testified to by Ryan, beween him and the respondent, took place a week before the convening of the Court of Impeachment. Page 1135 of the record.

Those transactions testified to, respectively, by Morgenthau and Ryan, took place after the articles of impeachment were framed and presented by the Assembly. That was done on August 13, 1913, and I hold that nothing to the detriment of the respondent taking place after the articles were framed can be considered against him; but, agreeing with Judge Bartlett that the transactions between the respondent and Peck have been established without contradiction, I vote guilty.

The Clerk.— Senator Heacock.

The President.— Senator Heacock, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Heacock.— Not guilty.

The Clerk.— Senator Healy.

The President.— Senator, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Healy.— Guilty.

The Clerk.— Senator Heffernan.

The President.— Senator Heffernan, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Heffernan.— Guilty.

The Clerk.— Senator Herrick.

The President.— Senator, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Herrick.— Mr. President, this court having decided that the testimony of the witness Peck could be considered as substantive evidence of the allegations set forth in Article IV, I find that his testimony is true, as it stands on the record absolutely unexplained, uncontradicted and unimpeached.

I vote guilty.

The Clerk.— Senator Hewitt.

The President.— Senator, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Hewitt.— Guilty.

The Clerk.— Judge Hiscock.

The President.— Judge Hiscock, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Judge Hiscock.— While I find that the evidence of Mr. Peck is true, and while I believe the evidence of Mr. Peck to be true, I am unable to find in the evidence the facts which, in my judgment, are necessary to sustain this particular article. Therefore I am compelled to vote not guilty on this article.

The Clerk.— Judge Hogan.

The President.— Judge Hogan, how say you, is the respondent guilty or not guilty, as charged in this fourth article of impeachment?

Judge Hogan.— Guilty.

The Clerk.— Senator McClelland.

The President.— Senator, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator McClelland.— Coinciding with the views expressed by Judge Chase and Judge Bartlett, I am constrained to vote on Article IV guilty.

The Clerk.— Senator McKnight.

The President.— Senator, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator McKnight.— Not guilty.

The Clerk.— Senator Malone.

The President.— Senator, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Malone.— Guilty.

The Clerk.— Judge Miller.

The President.— Judge Miller, how say you, is the respondent guilty or not guilty as charged in the fourth article of impeachment?

Judge Miller.— I entirely agree with all that the Presiding Judge has said on the subject of this article, and, for the reasons stated by him, I vote not guilty.

The Clerk.— Senator Murtaugh.

The President.— Senator, how say you, is the respondent guilty or not guilty as charged in the fourth article of impeachment?

Senator Murtaugh.— Guilty.

The Clerk.— Senator O'Keefe.

The President.— Senator, how say you, is the respondent guilty or not guilty as charged in the fourth article of impeachment?

Senator O'Keefe.— Not guilty.

The Clerk.— Senator Ormrod.

The President.— Senator, how say you, is the respondent guilty or not guilty as charged in the fourth article of impeachment?

Senator Ormrod.— Guilty.

The Clerk.— Senator Palmer.

The President.— Senator Palmer, how say you, is the respondent guilty or not guilty as charged in the fourth article of impeachment?

Senator Palmer.— Mr. Presiding Judge, this is the article concerning which in the private meetings of this Court, I asked the question, or raised the question of date. Believing that was involved in the question, I let my vote stand as it was. I regretted that the views of the Presiding Judge did not stand with the Court. Voting with him at that time I feel that I must bow to the verdict of the Court itself, that makes the Peck incident germane to this article IV. I regretted that it was uncontradicted; that the Governor did not come here himself and contradict it, if he

could; that no cross-examination was had; that if a witness to discredit Mr. Peck appeared, he was not allowed to testify, and that the evidence is, therefore, uncontradicted.

Now, I remember that I took an oath here that I would vote according to the testimony that was here given. This being a matter of fact, and not a matter of law, this occurring at a date since the adjournment, when there was no question as to who was the Governor, I regretfully vote guilty.

The Clerk.— Senator Patten.

The President.— Senator, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Patten.— Guilty.

The Clerk.— Senator Peckham.

The President.— Senator Peckham, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Peckham.— Agreeing with the opinion expressed by the Presiding Judge, I vote not guilty.

The Clerk.— Senator Pollock.

The President.— Senator Pollock, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Pollock.— Guilty.

The Clerk.— Senator Ramsperger.

The President.— Senator, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Ramsperger.— Guilty.

The Clerk.— Senator Sage.

The President.— Senator, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Sage.— Guilty.

The Clerk.— Senator Sanner.

The President.— Senator, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Sanner.— Guilty.

The Clerk.— Senator Seeley.

The President.— Senator, how say you, as the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Seeley.— Not guilty.

The Clerk.— Senator Simpson.

The President.— Senator, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Simpson.— Mr. President, for the reasons given by Judge Bartlett, I vote guilty.

The Clerk.— Senator Stivers.

The President.— Senator, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Stivers.— Not guilty.

The Clerk.— Senator Sullivan.

The President.— Senator Sullivan, how say you, is the respondent guilty or not guilty as charged in the fourth article of impeachment?

Senator Sullivan.— Guilty.

The Clerk.— Senator Thomas.

The President.— Senator, how say you, is the respondent guilty or not guilty as charged in the fourth article of impeachment?

Senator Thomas.— Mr. Presiding Judge, I have been rather chary of intruding upon my colleagues up to this time. I now desire one statement to go into the record regarding Article IV.

I can scarcely subscribe to the statement, that we took an oath to decide this case according to the evidence. I certainly did not.

My oath was to truly and impartially hear, try and determine the impeachment. That includes the law as well as the evidence. My attention has been called to the fact that, "according to the evidence," is in that oath; it is not in the copy on page 8 of the printed record before me. I read from that record.

Now, Mr. President, if you will recall, the members of the Court carefully considered, before amending this article, whether or not it would be included under the idea of threats or a menace; and also whether an additional name could be included under the words "and all other persons" at the top of page 65 of the printed record. I did not hear any emphasis laid upon this clause, which is a part of Article IV, that in thus practicing deceit and fraud, and using threats and menace as and with the intent aforesaid, and upon the questions before named, which persons were Sarecky, Colwell and Fuller, "and all others;" but the point of this Article IV is contained in that last paragraph that "in thus practicing fraud and deceit and with the intent aforesaid and upon the persons before named."

Now, I understand perfectly well that there is a wide difference of opinion as to the action of the Court on this article, and as I feel more strongly upon this than upon any other article, I shall ask the Court to bear with me just a moment to put myself on the record.

I am of the opinion that the language of article IV is not broad enough to include the so-called Peck incident, and that the action of this court in making it so was not warranted by the rules of evidence applied to the language of the article. I know of no rule of construction to justify the taking of an article of impeachment, placing it upon the procrustean for evidence, there to chop it off or stretch it out as the necessity of the case may require. I regard this action as the fatal defect in this proceeding. Through the coming years the accusing finger will keep silently pointed, and I believe it will be condemned in due time by the accepted canons of statutory construction and the just judgment of fair-minded men. I deplore this action of the court. I deplore the precedent so established. I believe that we have charged a man with one crime and convicted him of another. If this be so, surely we have this day sown the dragon's teeth which shall some

day spring up in crushing forms to strike out one of the valued safeguards which centuries of legal procedure have developed for the protection of the citizens. I shall be no party to this action, and to that end I vote not guilty on the charge contained in this article.

The Clerk.— Senator Thompson.

The President.— Senator Thompson, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Thompson.— Mr. President, before entering upon this undertaking I took an oath to try the impeachment according to the evidence. I therefore vote guilty.

The Clerk.— Senator Torborg.

The President.— Senator Torborg, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Torborg.— Guilty.

The Clerk.— Senator Velte.

The President.— Senator, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Velte.— Guilty.

The Clerk.— Senator Wagner.

The President.— Senator Wagner, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Wagner.— For the reasons which I gave in the private consultation, which I shall file with my opinion, I vote guilty.

The Clerk.— Senator Walters.

The President.— Senator, how say you, is the respondent guilty or not guilty as charged in the fourth article of impeachment?

Senator Walters.— Guilty.

The Clerk.— Senator Wende.

The President.— Senator, how say you, is the respondent guilty or not guilty as charged in the fourth article of impeachment?

Senator Wende.— Presiding Judge, I understand the rule to be that you can observe the conduct of a witness on the stand and that a witness' own conduct on the stand is capable of elucidating the testimony of the witness. For the reasons stated by the Presiding Judge and by Senator Thomas, and for the further reason that I do not believe the evidence of the witness Peck, I vote not guilty.

The Clerk.— Judge Werner.

The President.— Judge Werner, how say you, is the respondent guilty or not guilty as charged in the fourth article of impeachment?

Judge Werner.— For the reasons stated in private consultation, which will be more elaborately stated in the opinion which I shall file, I vote guilty.

The Clerk.— Senator Wheeler.

The President.— Senator Wheeler, how say you, is the respondent guilty or not guilty as charged in the fourth article of impeachment?

Senator Wheeler.— Not guilty.

The Clerk.—Senator White.

The President.— Senator White, how say you, is the respondent guilty or not guilty as charged in the fourth article of impeachment.

Senator White.—Guilty.

The Clerk.— Senator Whitney.

The President.—Senator Whitney, how say you, is the respondent guilty or not guilty, as charged in the fourth article of impeachment?

Senator Whitney.— Mr. Presiding Judge, I have been unable to find anything in the evidence to sustain the charges made in Article IV. I therefore feel compelled to vote not guilty.

The Clerk.— Senator Wilson.

The President.— Senator Wilson, how say you, is the respondent guilty or not guilty as charged in the fourth article of impeachment?

Senator Wilson.— Mr. President, I vote guilty.

The Clerk.— Guilty, 43; not guilty, 14.

Senator Thompson.— Mr. President.

The President.— One moment. The presiding member of the Court forgot to announce that on the second charge the respondent had been convicted by more than two-thirds of the members of the Court. On the third charge he has been acquitted. On the fourth charge, by the vote now announced, he has also been convicted by more than two-thirds of the members of the Court.

Senator Thompson.— Mr. President.

The President.— Senator Thompson.

Senator Thompson.— I move that we do now adjourn or recess until to-morrow morning at 10.30.

Senator Wagner.— I second the motion.

The President.— All those in favor of the motion please say aye, opposed no. **Carried.**

Crier, adjourn Court until to-morrow morning at half-past ten o'clock.

The Crier.— Hear ye, hear ye, hear ye, all persons having any further business before this Court of Impeachment, held in and for the State of New York, may depart hence and appear here to-morrow morning at ten o'clock and thirty minutes, to which time this Court now stands adjourned.

Whereupon, at 7:10 o'clock P. M., an adjournment was taken until Friday, October 17, 1913, at 10:30 o'clock A. M.

SENATE CHAMBER,

ALBANY, N. Y., *October* 17, 1913.

Pursant to adjournment the Court convened at 10:30 o'clock, a. m.

PRESENT:

Hon. EDGAR M. CULLEN, Presiding Judge,
and
THE JUDGES OF THE COURT OF APPEALS,
and
THE SENATORS OF THE STATE OF NEW YORK.

APPEARANCES:

THE MANAGERS:
Same as heretofore.

Counsel for the Managers:
Same as heretofore.

Counsel for the Respondent:
Same as heretofore.

The President.— Call the roll, Clerk.

The Clerk thereupon called the roll and found that there was a quorum present with the following absentees:

Senator Fitzgerald.

Judge Gray.

The Clerk.— A quorum present.

The President.— Open Court.

The Crier.— Hear ye, hear ye, hear ye, all persons having business before this Court of Impeachment held in and for the State of New York may now draw near, give their attendance and they will be heard.

The President.— The Clerk will read the fifth article.

The Clerk.— (Reading):

ARTICLE V. That the said William Sulzer, then being the Governor of the State of New York, unmindful of the duties of his office, and in violation of his oath of office, was guilty of mal and corrupt conduct in his office as such Governor of the State, and was guilty of preventing and dissuading a witness from attending under a subpoena in violation of section 2441 of the Penal Law of said State, in that, while a certain committee of the Legislature of the State of New York named by a concurrent resolution of said Legislature to investigate into, ascertain, and report at an extraordinary session of the Legislature then in session upon all expenditures made by any candidate voted for at the last preceding election by the electors of the whole State, and upon all statements filed by and on behalf of any such candidate, for moneys or things of value received or paid out in aid of his election, and their compliance with the present requirements of law relative thereto,— while such committee was conducting such investigation and had full authority in the premises, he, the said William Sulzer, wilfully prevented and dissuaded a certain witness, to wit: Frederick L. Colwell, who had been duly summoned or subpoenaed, to attend as a witness before said committee hereinbefore named for the 8th day of August, 1913, from attending pursuant to said summons or subpoena.

That, in so preventing or dissuading said Frederic L. Colwell, who had thus been duly summoned or subpoenaed to appear before said committee on said day named, from attending before said committee pursuant to said summons or subpoena, the said William Sulzer acted wrongfully and wilfully and corruptly and was guilty of a violation of the statutes of the State and of section 2441 of the Penal Law, and was guilty of a misdemeanor, to the great scandal and reproach of the Governor of the State of New York.

The President.— Call the roll.

The Clerk.— Senator Argetsinger.

The President.— Senator Argetsinger, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Argetsinger.— Not guilty.

The Clerk.— Judge Bartlett.

The President.— Judge Bartlett, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Judge Bartlett.— Not guilty.

The Clerk.— Senator Blauvelt.

The President.— Senator Blauvelt, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Blauvelt.— Not guilty.

The Clerk.— Senator Boylan.

The President.— Senator Boylan, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Boylan.— Not guilty.

The Clerk.— Senator Brown.

The President.— Senator Brown, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Brown.— Not guilty.

The Clerk.— Senator Bussey.

The President.— Senator Bussey, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Bussey.— Not guilty.

The Clerk.— Senator Carroll.

The President.— Senator Carroll, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Carroll.— Not guilty.

The Clerk.— Senator Carswell.

The President.— Senator Carswell, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Carswell.— Not guilty.

The Clerk.— Senator Coats.

The President.— Senator Coats, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Coats — Not guilty.

The Clerk.— Judge Collin.

The President.— Judge Collin, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Judge Collin.— Not guilty.

The Clerk.— Judge Cuddeback.

The President.— Judge Cuddeback, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Judge Cuddeback.— Not guilty.

The Clerk.— Judge Cullen, President.

The President.— Not guilty.

The Clerk.— Senator Cullen.

The President.— Senator Cullen, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Cullen.— Not guilty.

The Clerk.— Senator Duhamel.

The President.— Senator Duhamel, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Duhamel.— Not guilty.

The Clerk.— Senator Emerson.

The President.— Senator Emerson, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Emerson.— Not guilty.

The Clerk.— Senator Foley.

The President.— Senator Foley, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Foley.— Not guilty.

The Clerk.— Senator Frawley.

The President.— Senator, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Frawley.— Not guilty.

The Clerk.— Senator Godfrey.

The President.— Senator, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Godfrey.— Not guilty.

The Clerk.— Senator Griffin.

The President.— Senator, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Griffin.— Not guilty.

The Clerk.— Senator Heacock.

The President.— Senator Heacock, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Heacock.— Not guilty.

The Clerk.— Senator Healy.

The President.— Senator, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Healy.— Not guilty.

The Clerk.— Senator Heffernan.

The President.— Senator, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Heffernan.— Not guilty.

The Clerk.— Senator Herrick.

The President.— Senator, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Herrick.— Not guilty.

The Clerk.— Senator Hewitt.

The President.— Senator, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Hewitt.— Not guilty.

The Clerk.— Judge Hiscock.

The President.— Judge Hiscock, how say you, is the respondent guilty or not guilty as charged in the fifth article of impeachment?

Judge Hiscock.— Not guilty.

The Clerk.— Judge Hogan.

The President.— Judge Hogan, how say you, is the respondent guilty or not guilty as charged in the fifth article of impeachment?

Judge Hogan.— Not guilty.

The Clerk.— Senator McClellan.

The President.— Senator, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator McClellan.— Not guilty.

The Clerk.— Senator McKnight.

The President.— Senator, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator McKnight.— Not guilty.

The Clerk.— Senator Malone.

The President.— Senator Malone, how say you, is the respondent guilty or not guilty, as charged in this article?

Senator Malone.— Not guilty.

The Clerk.— Judge Miller.

The President.— Judge Miller, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Judge Miller.— Not guilty.

The Clerk.— Senator Murtaugh.

The President.— Senator Murtaugh, how say you, is the respondent guilty or not guilty, as charged in the fifth article of impeachment?

Senator Murtaugh.— Not guilty.

The Clerk.— Senator O'Keefe.

The President.— Senator O'Keefe, how say you, is the respondent guilty or not guilty, as charged in this article?

Senator O'Keefe.— Not guilty.

The Clerk.— Senator Ormrod.

The President.— Senator Ormrod, how say you, is the respondent guilty or not guilty, as charged in this article?

Senator Ormrod.— Not guilty.

The Clerk.— Senator Palmer.

The President.— Senator Palmer, how say you, is the respondent guilty or not guilty, as charged in this article?

Senator Palmer.— Not guilty.

The Clerk.— Senator Patten.

The President.— Senator Patten, how say you, is the respondent guilty or not guilty, as charged in this article?

Senator Patten.— Not guilty.

The Clerk.— Senator Peckham.

The President.— Senator Peckham, how say you, is the respondent guilty or not guilty, as charged in this article?

Senator Peckham.— Not guilty.

The Clerk.— Senator Pollock.

The President.— Senator Pollock, how say you, is the respondent guilty or not guilty, as charged in this article?

Senator Pollock.— Not guilty.

The Clerk.— Senator Ramsperger.

The President.— Senator Ramsperger, how say you, is the respondent guilty or not guilty, as charged in this article?

Senator Ramsperger.— Not guilty.

The Clerk.— Senator Sage.

The President.— Senator Sage, how say you, is the respondent guilty or not guilty, as charged in this article?

Senator Sage.— Not guilty.

The Clerk.— Senator Sanner.

The President.— Senator Sanner, how say you, is the respondent guilty or not guilty, as charged in this article?

Senator Sanner.— Not guilty.

The Clerk.— Senator Seeley.

The President.— Senator Seeley, how say you, is the respondent guilty or not guilty, as charged in this article?

Senator Seeley.— Not guilty.

The Clerk.— Senator Simpson.

The President.— Senator Simpson, how say you, is the respondent guilty or not guilty, as charged in this article?

Senator Simpson.— Not guilty.

The Clerk.— Senator Stivers.

The President.— Senator Stivers, how say you, is the respondent guilty or not guilty, as charged in this article?

Senator Stivers.— Not guilty.

The Clerk.— Senator Sullivan.

The President.— Senator Sullivan, how say you, is the respondent guilty or not guilty, as charged in this article?

Senator Sullivan.— Not guilty.

The Clerk.— Senator Thomas.

The President.— Senator Thomas, how say you, is the respondent guilty or not guilty, as charged in this article?

Senator Thomas.— Not guilty.

The Clerk.— Senator Thompson.

The President.— Senator Thompson, how say you, is the respondent guilty or not guilty, as charged in this article?

Senator Thompson.— Not guilty.

The Clerk.— Senator Torborg.

The President.— Senator Torborg, how say you, is the respondent guilty or not guilty, as charged in this article?

Senator Torborg.— Not guilty.

The Clerk.— Senator Velte.

The President.— Senator Velte, how say you, is the respondent guilty or not guilty, as charged in this article?

Senator Velte.— Not guilty.

The Clerk.— Senator Wagner.

The President.— Senator Wagner, how say you, is the respondent guilty or not guilty, as charged in this article?

Senator Wagner.— Not guilty.

The Clerk.— Senator Walters.

The President.— Senator Walters, how say you, is the respondent guilty or not guilty, as charged in this article?

Senator Walters.— Not guilty.

The Clerk.— Senator Wende.

The President.— Senator Wende, how say you, is the respondent guilty or not guilty, as charged in this article?

Senator Wende.— Not guilty.

The Clerk.— Judge Werner.

The President.— Judge Werner, how say you, is the respondent guilty or not guilty, as charged in this article?

Judge Werner.— Not guilty.

The Clerk.— Senator Wheeler.

The President.— Senator Wheeler, how say you, is the respondent guilty or not guilty, as charged in this article?

Senator Wheeler.— Not guilty.

The Clerk.— Senator White.

The President.— Senator White, how say you, is the respondent guilty or not guilty, as charged in this article?

Senator White.— Not guilty.

The Clerk.— Senator Whitney.

The President.— Senator Whitney, how say you, is the respondent guilty or not guilty, as charged in this article?

Senator Whitney.— Not guilty.

The Clerk.— Senator Wilson.

The President.— Senator Wilson, how say you, is the respondent guilty or not guilty, as charged in this article?

Senator Wilson.— Not guilty.

The Clerk.— Not guilty, 57.

The President.— The respondent, under the vote as announced by the Clerk, is not guilty of the charges contained in this article.

Read the sixth article.

The Clerk (Reading):

Article VI.— That the said William Sulzer, now Governor of the State of New York, was duly and regularly nominated by the Democratic party of said State as its candidate for Governor, at a regular convention of said party held in the city of Syracuse, on or about the 1st day of October, 1912, such nomination having been made on or about the 2d day of October, 1912, and he was, thereafter, until the 5th day of November, 1912, when he was elected to such office of Governor, such candidate of said party for said office.

That being, and while, such candidate for said office of Governor, various persons contributed and delivered money and checks representing money, to him, said William Sulzer, to aid his election to said office of Governor, and in connection with such election; that said money and checks were thus contributed and delivered to said William Sulzer as bailee, agent, or trustee, to be used in paying the expenses of said election and for no other purpose whatever; that the said William Sulzer, with the intent to appropriate the said money and checks representing money, thus contributed and delivered to him as aforesaid, to his own use, having the same in his possession, custody, or control as bailee, agent, or trustee as aforesaid, did not apply the same to the uses for which he had thus received them, but converted the same and appropriated them to his own use and used the same, or a large part thereof, in speculating in stocks, through brokers operating in the New York Stock Exchange, and thereby stole such money and checks and was guilty of larceny.

That among such money and checks thus stolen by said William Sulzer was a check of Jacob H. Schiff for $2,500; a check of Abram I. Elkus for $500; a check of William F. McCombs for $300; a check of Henry Morgenthau for $1,000; a check of John Lynn for $500; a check of Theodore W. Meyers for $1,000; a check of Lyman A. Spaulding for $100; a check of Edward F. O'Dwyer for $100; a check of John W. Cox for $300; a check of Frank V. Strauss Co. for $1,000; a check of John T. Dooling for $1,000; and cash, aggregating $32,850.

That in so converting and appropriating said money and checks to his own use, the said William Sulzer did not act as required by law, but did act wrongfully and wilfully and corruptly, and was guilty of a violation of sections 1290 and 1294 of the Penal Law, and of grand larceny, and the same was done for the purpose of concealing, and said action and omission of said William Sulzer did conceal the names of persons who had contributed funds in aid of his election and defeated the purpose of the provisions of the statute which required such publication that the people might know whether, or not, said Governor, after he had taken office, was attempting to reward persons who had so contributed in aid of his election, by bestowing official patronage, or favors, upon them, and thereafter, having taken the oath as Governor of the State of New York and proceeded to perform the duties thereof, the said appropriation to his own use, and his larceny of the same, caused great scandal and reproach of the Governor of the State of New York.

Senator Wagner.— Mr. President, I believe that there is practical unanimity upon the three articles upon which we now vote, and I therefore suggest to the presiding officer, in order to save himself a good deal of labor and effort, that the roll be called and the presiding officer not put the question to each member of the Court individually.

The President.—All those in favor of that motion please say aye.

(The members of the Court responded accordingly).

The President.— Opposed no. Carried.

Gentlemen, you will answer, though, to this not either yes or no, but guilty or not guilty, as your name is called. Call the roll, clerk.

The Clerk.— Senator Argetsinger.

Senator Aregtsinger.— Your Honor, I cannot find him guilty under the article of impeachment on which we are now voting, although I do consider the offense an immoral one, and of sufficient consequence under certain conditions to be impeachable. But, however, I vote not guilty under the article.

The Clerk.— Judge Bartlett.

Judge Bartlett.— I vote not guilty on the grounds stated by me with reference to the first article, and on the further ground that the acts proved thereunder do not constitute larceny in any legal sense.

The Clerk.— Senator Blauvelt.

Senator Blauvelt.— Not guilty.

The Clerk.— Senator Boylan.

Senator Boylan.— Not guilty.

The Clerk.— Senator Brown.

Senator Brown.— Mr. President, the acts proved under this article lap over onto the other articles under which the respondent has been found guilty, and the allegation lacks so much correspondence with the proof that I vote not guilty.

The Clerk.— Senator Bussey.

Senator Bussey.— Mr. President, while the offense which has been committed by the Governor under this article is unnamed, in the common parlance of the street it is designated as panhandling. I vote not guilty.

The Clerk.— Senator Carroll.

Senator Carroll. —Not guilty.

The Clerk.— Senator Carswell.

Senator Carswell.— Not guilty.

The Clerk.— Judge Chase.

Judge Chase.— Not guilty.

The Clerk.— Senator Coats.

Senator Coats.— Not guilty.

The Clerk.— Judge Collin.

Judge Collin.— Mr. Presiding Judge, I hold that the disposition made by William Sulzer of the contributions made to him for campaign purposes, although highly dishonorable, do not have, when considered apart from the false statement in regard to them, that degree of moral turpitude and the relation to the office of Governor which is essential to constitute it an impeachable offense. For that reason and for those stated in my written statement, I vote not guilty.

The Clerk.— Judge Cuddeback.

Judge Cuddeback.— Not guilty.

The Clerk.— The President, Judge Cullen.

The President.— I vote not guilty, but as I have already said, in that portion of my written opinion which I read to you, I find that the respendent took advantage of the occasion of his nomination to collect and receive large sums of money, substantially all of which was received by him to aid in his election, converted that to his own use for the purpose of enriching himself. But I believe that this was not larceny; I do not think it is really a debatable question. It is doubtful, to say the least, whether he might not have been legally entitled to do it.

The difference between the conversion of money belonging to another and the conversion of money given for one's self is plain. If a master gives his clerk money to go on a trip for the master, and the clerk converts that to his own use, that is larceny under our statute; it would be embezzlement under the previous statute. But if the master gives to a clerk, even though for a specific

purpose, and the purpose is for the clerk, as for instance, to give it to the clerk to go on a trip for his recreation or health, it is not illegal to the extent of being a crime, and possibly not illegal at all, for him to use it for another purpose. Dishonorable it is in the highest degree, but it really is not illegal, and certainly it is not criminal.

I vote no, and for the reasons as stated in reference to the first and second charges.

The Clerk.— Senator Cullen.

Senator Cullen.— I concur in the opinion expressed by the President, and for that reason, I vote not guilty.

The Clerk.— Senator Duhamel.

Senator Duhamel.— Not guilty.

The Clerk.— Senator Emerson.

Senator Emerson.— Not guilty.

The Clerk.— Senator Foley.

Senator Foley.— Not guilty.

The Clerk.— Senator Frawley.

Senator Frawley.— Not guilty.

The Clerk.— Senator Godfrey.

Senator Godfrey.— Presiding Judge, for the reasons given by Judge Cullen, I vote not guilty.

The Clerk.— Senator Griffin.

Senator Griffin.— Mr. President, if the framers of this charge had been content to set out the facts without characterizing them as larceny, I should have voted guilty. A finding of guilty would practically convict the respondent of a crime. As the guilt or innocence of the respondent of a criminal offense can be tried out in a criminal court, and as this is not a Court for the trial of crime, I am constrained to vote not guilty.

The Clerk.— Senator Heacock.

Senator Heacock.— Not guilty.

The Clerk.— Senator Healy.

Senator Healy.— For the reasons given by Judge Cullen, I vote not guilty.

The Clerk.— Senator Heffernan.

Senator Heffernan.— Not guilty.

The Clerk.— Senator Herrick.

Senator Herrick.— For the reasons given in my vote on article one and article two, I vote not guilty.

The Clerk.— Senator Hewitt.

Senator Hewitt.— Not guilty.

The Clerk.— Judge Hiscock.

Judge Hiscock.— I vote not guilty, and I adopt as reasons for my vote those stated by the Presiding Judge, with the exception of the one that seems to imply that independent of any other consideration, he could not be convicted on this charge because the act occurred before he took office.

The Clerk.— Judge Hogan.

Judge Hogan.— Not guilty.

The Clerk.— Senator McClelland.

Senator McClelland.— Mr. Presiding Judge, in voting as I do, I merely wish in passing to say that a description of the act included in this article would bankrupt the English language to find an adequate description, and I have taken the liberty that our language permits, to improvise in my humble way a definition of this act. I have designated it as "candidatial mendicancy." I vote not guilty.

The Clerk.— Senator McKnight.

Senator McKnight.— Not guilty.

The Clerk.— Senator Malone.

Senator Malone.— Not guilty.

The Clerk.— Judge Miller.

Judge Miller.— Presiding Judge, for the purpose of sharply marking the limitations, or some of the limitations upon the grounds of impeachment, which I endeavored to formulate in the opinion delivered by me with respect to article I, I desire to state for the purpose of the record, the distinction which I find between the acts charged in article VI and those charged in articles I and II, which lead me to vote not guilty on article VI. Those distinctions are:

1. That the act was committed before and not after the election, though I do not now say that that would necessarily be a conclusive limitation.

2. That the act or the wrongs, the moral wrong, was a wrong in its immediate consequences to the donors, and not to the State.

3. That the use which the respondent made of the moneys contributed to him have no necessary relation to the subsequent discharge of his official duty, such as I find that his failure to file the statement or his filing of a false statement in violation of law has. For these reasons I vote not guilty.

The Clerk.— Senator Murtaugh.

Senator Murtaugh.— Not guilty.

The Clerk.— Senator O'Keefe.

Senator O'Keefe.— Not guilty.

The Clerk.— Senator Ormrod.

Senator Ormrod.— Not guilty.

The Clerk.— Senator Palmer.

Senator Palmer.— Not guilty.

The Clerk.— Senator Patten.

Senator Patten.— Not guilty.

The Clerk.— Senator Peckham.

Senator Peckham.— Not guilty.

The Clerk.— Senator Pollock.

Senator Pollock.— Not guilty.

The Clerk.— Senator Ramsperger.

Senator Ramsperger.— Not guilty.

The Clerk.— Senator Sage.

Senator Sage.— Mr. President, in voting on this article, which has to be taken in connection with articles I and II, I believe very largely in what Judge Miller has just stated. I think the real wrong was committed on articles I and II, when the respondent, for the purpose of keeping this money, tried to conceal the source from which it came, and signed the false statement and swore to it. Having found him guilty on articles I and II, I think this article might well be dispensed with, and therefore I vote not guilty.

The Clerk.— Senator Sanner.

Senator Sanner.— Not guilty.

The Clerk.— Senator Seeley.

Senator Seeley.— Not guilty.

The Clerk.— Senator Simpson.

Senator Simpson.— Presiding Judge, I vote the respondent not guilty under this article, for the reason that in my judgment the acts charged therein do not rise to the dignity of an impeachable offense.

The Clerk.— Senator Stivers.

Senator Stivers.— Not guilty.

The Clerk.— Senator Sullivan.

Senator Sullivan.— Not guilty.

The Clerk.— Senator Thomas.

Senator Thomas.— Not guilty.

The Clerk.— Senator Thompson.

Senator Thompson.— Mr. President, I feel the same with reference to a state of mind regarding Article VI that I did regarding Articles I and II. There was nothing last fall, three weeks prior to election, more certain in the minds of students of political affairs from a political sense than that William Sulzer would be elected Governor at the ensuing election. That is proved in this case and because I remember asking the witnesses Morgenthau and Schiff on the stand whether they thought at the time that William Sulzer would be elected Governor, and they each answered in effect that they had no doubt of it.

Therefore, these men, in giving this money, could not have meant it as a necessary expenditure for the purpose of electing the man who in their mind already was as good as elected.

I think that this article was drawn wrong. The word " larceny " as it appears in it should have been replaced by the substitution of another word. I believe with special reference to the testimony of the witness Meany on the stand that this act committed by the Governor, that this was no different than the act committed by a certain senator in which he spent considerable time walking up and down one of the corridors of this capitol and obtained $250 for a friend. In this case the candidate for Governor received $10,000. Of course Meany is a clever man. He had no business at Albany or anywhere else except to lend to deserving persons about to receive power, money with no security and no memorandum. The experience learned by the candidate for Governor from the man Meany led him to perform the same operation on the witness Riley to the extent of $26,500.

I wish, Mr. President, this article contained the language that I think it ought to have contained, but inasmuch as it does not, and simply charges the one charge of larceny, I feel that I cannot vote guilty, and therefore vote not guilty.

The Clerk.— Senator Torborg.

Senator Torborg.— Not guilty.

The Clerk.— Senator Velte.

Senator Velte.— Not guilty.

The Clerk.— Senator Wagner.

Senator Wagner.— Not guilty.

The Clerk.— Senator Walters.

Senator Walters.— Not guilty.

The Clerk.— Senator Wende.

Senator Wende.— Not guilty.

The Clerk.— Judge Werner.

Judge Werner.— Not guilty.

The Clerk.— Senator Wheeler.

Senator Wheeler.— Not guilty.

The Clerk.— Senator White.

Senator White.— Not guilty.

The Clerk.— Senator Whitney.

Senator Whitney.— Not guilty.

The Clerk.— Senator Wilson.

Senator Wilson.— Not guilty.

The Clerk.— Not guilty, 57.

The President.— Under the vote as announced by the Clerk, the respondent is declared Not Guilty of the charge contained in the sixth article of impeachment.

Read the seventh.

The Clerk.—(Reading).

Article VII.— That the said William Sulzer, then being the Governor of the State of New York, unmindful of the duties of his office, and in violation of his oath of office, was guilty of mal and corrupt conduct in his office as such Governor of the State and was guilty of the corrupt use of his position as such Governor, and of the authority of said position, and of a violation of section 775 of the Penal Law of said State, in that, while holding a public office, to

wit: the office of Governor, he promised and threatened to use such authority and influence of said office of Governor for the purpose of affecting the vote or political action of certain public officers; that among such public officers to whom the said William Sulzer promised, or threatened, to use his authority and influence as Governor, for the purpose of affecting their votes, said persons to whom such promises or threats were made were, Hon. S. G. Prime, Jr., a member of Assembly, for the county of Essex, for the year 1913, the promise being that if said Prime would vote for certain legislation in which said William Sulzer was interested and, as Governor, was pressing to passage, he, said Sulzer, would sign a bill that had already passed the Legislature and was pending before him, reappropriating the sum of about $800,000 for the construction of roads in said county of Essex, and counties adjoining thereto, the said Governor at the time of said promise well knowing that the said Assemblyman S. G. Prime, Jr., was desirous of having said bill for said appropriation for roads signed by the Governor.

Hon. Thaddeus C. Sweet, a member of Assembly for the county of Oswego for the year 1913, the threat being that if the said Sweet did not vote for certain legislation in which said William Sulzer was interested, and, as Governor, was pressing to passage, he, said Sulzer, would veto a bill that had already passed the Legislature and was pending before him, appropriating certain moneys for the construction of a bridge in said county of Oswego, the said Governor at the time of said threat well knowing that the said Assemblyman Thaddeus C. Sweet was desirous of having said bill for said appropriation signed.

That in so using the position and authority of the office of Governor the said William Sulzer acted wrongfully and wilfully and corruptly, and was guilty of a violation of the statutes of the State, and of section 775 of the Penal Law, and of a felony, to the great scandal and reproach of the Governor of the State of New York.

The President.— Unless there is objection made, the vote will be taken in the same manner as the last article.

Call the roll.

The Clerk.— Senator Argetsinger.

Senator Argetsinger.— Not guilty.

The Clerk.— Judge Bartlett.

Judge Bartlett.— Not guilty.

The Clerk.— Senator Blauvelt.

Senator Blauvelt.— Not guilty.

The Clerk.— Senator Boylan.

Senator Boylan.— Not guilty.

The Clerk.— Senator Brown.

Senator Brown.— The attitude of the Court upon this subject, this article, is an evidence of its capacity to detach itself from knowledge obtained outside the record. If you should interrogate the Senators you would probably find that at least three-fourths of them felt the charges made in this article were matters of such notorious information that they believed them completely, but no man has suggested and I am grateful to the Court that no man has acted as though any information obtained outside the record would in any way influence him in relation to this or any other article.

I am going gladly to vote "Not Guilty" upon this article, but I hope that the information contained in the press, which must be spread throughout the State, of the practices in this regard, may not serve to encourage any future executive that any such practices will be endorsed in this State.

I vote not guilty.

The Clerk.— Senator Bussey.

Senator Bussey.— Mr. President, not guilty.

The Clerk.— Senator Carroll.

Senator Carroll.— Not guilty.

The Clerk.— Senator Carswell.

Senator Carswell.— Adopting every word uttered by Senator Brown in this connection, I vote not guilty.

The Clerk.— Judge Chase.

Judge Chase.— Not guilty.

The Clerk.— Senator Coats.

Senator Coats.— Not guilty.

The Clerk.— Judge Collin.

Judge Collin.— Not guilty.

The Clerk.— Judge Cuddeback.

Judge Cuddeback.— Not guilty.

The Clerk.— President, Judge Cullen.

The President.— Not guilty.

The Clerk.— Senator Duhamel.

Senator Duhamel.— Not guilty.

The Clerk.— Senator Emerson.

Senator Emerson.— Not guilty.

The Clerk.— Senator Foley.

Senator Foley.— Not guilty.

The Clerk.— Senator Frawley.

Senator Frawley.— Mr. President, I ask to be excused from voting on this article.

The President.—You may be, if there is no objection made.

The Clerk.— Senator Godfrey.

Senator Godfrey.— Not guilty.

The Clerk.— Senator Griffin.

Senator Griffin.— Not guilty.

The Clerk.— Senator Heacock.

Senator Heacock.— Not guilty.

The Clerk.— Senator Healy.

Senator Healy.— Not guilty.

The Clerk.— Senator Heffernan.

Senator Heffernan.— Not guilty.

The Clerk.— Senator Herrick.

Senator Herrick.— Not guilty.

The Clerk.— Senator Hewitt.

Senator Hewitt.— Not guilty.

The Clerk.— Judge Hiscock.

Judge Hiscock.— Not guilty.

The Clerk.— Judge Hogan.

Judge Hogan.— Not guilty.

The Clerk.— Senator McClellan.

Senator McClellan.— Not guilty.

The Clerk.— Senator Malone.

Senator Malone.— Not guilty.

The Clerk.— Judge Miller.

Judge Miller.— Not guilty.

The Clerk.— Senator Murtaugh.

Senator Murtaugh.— Not guilty.

The Clerk.— Senator O'Keefe.

Senator O'Keefe.— Not guilty.

The Clerk.— Senator Ormrod.

Senator Ormrod.— Not guilty.

The Clerk.— Senator Palmer.

Senator Palmer.— Not guilty.

The Clerk.— Senator Patten.

Senator Patten.— Not guilty.

The Clerk.— Senator Peckham.

Senator Peckham.— Not guilty.

The Clerk.— Senator Pollock.

(No response).

The Clerk.— Senator Ramsperger.

Senator Ramsperger.— Not guilty.

The Clerk.— Senator Sage.

Senator Sage.— Mr. President, I have sworn to judge in this matter according to the evidence furnished before this Court. For that reason, and for that reason alone, I vote not guilty.

The Clerk.— Senator Sanner.

Senator Sanner.— Not guilty.

The Clerk.— Senator Seeley.

Senator Seeley.— Not guilty.

The Clerk.— Senator Simpson.

Senator Simpson.— Mr. Presiding Judge, I endorse every word that Senator Brown has said in connection with this article, but I vote not guilty.

The Clerk.— Senator Stivers.

Senator Stivers.— Not guilty.

The Clerk.— Senator Sullivan.

Senator Sullivan.— Not guilty.

The Clerk.— Senator Thomas.

Senator Thomas.— Not guilty.

The Clerk.— Senator Thompson.

Senator Thompson.— Mr. President, I have no sympathy whatever with this accusation. I think a member of the Legislature

who could be influenced in his official action by either threats or menaces of a Governor would not be worthy to represent his people. I vote not guilty.

The Clerk.— Senator Torborg.

Senator Torborg.— Not guilty.

The Clerk.— Senator Velte.

Senator Velte.— Not guilty.

The Clerk.— Senator Wagner.

Senator Wagner.— Not guilty.

The Clerk.— Senator Walters.

Senator Walters.— Not guilty.

The Clerk.— Senator Wende.

Senator Wende.— Not guilty.

The Clerk.— Judge Werner.

Judge Werner.— Not guilty.

The Clerk.— Senator Wheeler.

Senator Wheeler.— Not guilty.

The Clerk.— Senator White.

Senator White.— Not guilty.

The Clerk.— Senator Whitney.

Senator Whitney.— Not guilty.

The Clerk.— Senator Wilson.

Senator Wilson.— Not guilty.

The Clerk.— Senator Pollock.

Senator Pollock.— Not guilty.

The Clerk.— Fifty-six, not guilty.

The President.— Under the vote as announced by the Clerk, the respondent is acquitted of the charges contained in the 7th article of impeachment.

Read the 8th article, Mr. Clerk.

The Clerk (Reading):

Article VIII. That the said William Sulzer, then Governor of the State of New York, unmindful of the duties of his office and in violation of his oath of office, was guilty of mal and corrupt conduct in his office as such Governor of the State and was guilty of the corrupt use of his position as such Governor and of the authority of said position, and of a violation of section 775 of the Penal Law of said State, in that, while holding a public office, to wit: The office of Governor, he corruptly used his authority, or influence as such Governor to affect the current prices of securities listed and selling on the New York Stock Exchange, in some of which securities he was at the time interested and in which he was speculating, carrying, buying or selling, upon a margin or otherwise, by first urging, recommending and pressing for passage, legislation affecting the business of the New York Stock Exchange and the prices of securities dealt in on said Exchange, which legislation he caused to be introduced in the Legislature, and then by withdrawing or attempting to withdraw from the consideration of the Legislature, such legislation which was then pending therein — all the time concealing his identity in said transactions by subterfuge.

That, in so using the position and authority of the office of Governor, the said William Sulzer acted wrongfully and wilfully and corruptly and was guilty of a violation of the statutes of the State, and of section 775 of the Penal Law, and of a felony, to the great scandal and reproach of the Governor of the State of New York.

The President.— Call the roll and we will take a vote on this Article in the same manner as the vote has been taken on the two preceding articles, unless there is objection made.

Call the roll.

The Clerk.— Senator Argetsinger.

Senator Argetsinger.— Not guilty.

The Clerk.— Judge Bartlett.

Judge Bartlett.— Not guilty.

The Clerk.— Senator Blauvelt.

Senator Blauvelt.— Not guilty.

The Clerk.— Senator Boylan.

Senator Boylan.— Not guilty.

The Clerk.— Senator Brown.

Senator Brown.— Mr. President, I shall act on this article as I did upon the last article, but I cannot let this vote pass without giving some idea of the astonishment produced in my mind by the revelations in relation to the dealings in the Stock market by the Governor.

Some seventeen bills affecting the Stock Exchange and trading upon the Stock Exchange were introduced by direction of the Governor in the last Legislature. Several of them affected seriously the conduct of the business of the Stock Exchange, and it was not unlikely that they would affect the prices of stocks. What was my emotion I need not say when I discovered that at the time these bills were placed before us and were pending before us in the Legislature, the Governor was receiving duns from his Stockbrokers to make good deficiency in his account. And when he received contributions prior to his election they were hastened by his confidential messages to make good those accounts, and that those accounts existed and continued from the time of the introduction of the bills down to long after the adjournment of the Legislature.

The matter has not been well developed by the evidence owing to difficulties probably by counsel, and I think I have no right to resort to the knowledge I have outside of the record, and vote not guilty.

The Clerk.— Senator Bussey.

Senator Bussey.— Not guilty.

The Clerk.— Senator Carroll.

Senator Carroll.— Not guilty.

The Clerk.— Senator Carswell.

Senator Carswell.— Mr. President, the allegations in this article, considered in the light of the evidence, do not in my judgment constitute an impeachable offense, and I vote not guilty.

The Clerk.— Judge Chase.

Judge Chase.— Not guilty.

The Clerk.— Senator Coats.

Senator Coats.— Not guilty.

The Clerk.— Judge Collin.

Judge Collin.— Not guilty.

The Clerk.— Judge Cuddeback.

Judge Cuddeback.— Not guilty.

The Clerk.— President Judge Cullen.

President Cullen.— Not guilty.

The Clerk.— Senator Cullen.

Senator Cullen.— Not guilty.

The Clerk.— Senator Duhamel.

Senator Duhamel.— Not guilty.

The Clerk.— Senator Emerson.

Senator Emerson.— Not guilty.

The Clerk.— Senator Foley.

Senator Foley.— Mr. President, I vote not guilty upon this article, but in doing so —

The Clerk.— Senator Frawley.

The President.— One moment, Mr. Clerk.

Senator Foley.— I vote not guilty upon this article, but in doing so I desire to comment also on the fact that the respondent seized upon certain issues which he thought were popular in cer-

tain parts of the State to conceal his other action. He seized upon these issues when he knew that he had committed certain wrongs, which wrongs were exposed in the evidence here. In doing that he was guilty of hypocrisy and all that may be condemned in the actions of a demagogue. But I do not think that he was guilty of the specific allegations charged in article eight. I therefore vote not guilty.

The Clerk.— Senator Frawley.

Senator Frawley.— Not guilty.

The Clerk.— Senator Godfrey.

Senator Godfrey.— Not guilty.

The Clerk.— Senator Griffin.

Senator Griffin.— Not guilty.

The Clerk.— Senator Heacock.

Senator Heacock.— Not guilty.

The Clerk.— Senator Healy.

Senator Healy.— Not guilty.

The Clerk.— Senator Heffernan.

Senator Heffernan.— Not guilty.

The Clerk.— Senator Herrick.

Senator Herrick.— Not guilty.

The Clerk.— Senator Hewitt.

Senator Hewitt.— Not guilty.

The Clerk.— Judge Hiscock.

Judge Hiscock.— Not guilty.

The Clerk.— Judge Hogan.

Judge Hogan.— Not guilty.

The Clerk.— Senator McClelland.

Senator McClelland.— Not guilty.

The Clerk.— Senator McKnight.

Senator McKnight.— Not guilty.

The Clerk.— Senator Malone.

Senator Malone.— Not guilty.

The Clerk.— Judge Miller.

Judge Miller.— Not guilty.

The Clerk.— Senator Murtaugh.

Senator Murtaugh.— Not guilty.

The Clerk.— Senator O'Keefe.

Senator O'Keefe.— Not guilty.

The Clerk.— Senator Ormrod.

Senator Ormrod.— Not guilty.

The Clerk.— Senator Palmer.

Senator Palmer.— Not guilty.

The Clerk.— Senator Patten.

Senator Patten.— Not guilty.

The Clerk.— Senator Peckham.

Senator Peckham.— Not guilty.

The Clerk.— Senator Pollock.

Senator Pollock.— Not guilty.

The Clerk.— Senator Ramsperger.

Senator Ramsperger.— Not guilty.

The Clerk.— Senator Sage.

Senator Sage.— Not guilty.

The Clerk.— Senator Sanner.

Senator Sanner.— Not guilty.

The Clerk.— Senator Seeley.

Senator Seeley.— Not guilty.

The Clerk.— Senator Simpson.

Senator Simpson.— Mr. President, the acts of the Governor deserve the condemnation of every fair, thinking man, but they do not rise to the dignity of an impeachable offense as shown by the evidence. For that reason I vote not guilty.

The Clerk.— Senator Stivers.

Senator Stivers.— Not guilty.

The Clerk.— Senator Sullivan.

Senator Sullivan.— Not guilty.

The Clerk.— Senator Thomas.

Senator Thomas.— Not guilty.

The Clerk.— Senator Thompson.

Senator Thompson.— Mr. President, I do not believe, as stated by Senator Carswell, that this article charges an impeachable offense, but I want to vote on this article on the merits, and I think on the merits the Governor has not been shown to be guilty of the acts charged. As I see it, his operations in the stock market, as distinguished from his legislative acts — his legislative acts, as I see it, were against his personal interests. I vote not guilty.

The Clerk.— Senator Torborg.

Senator Torborg.— Not guilty.

The Clerk.— Senator Velte.

Senator Velte.— Not guilty.

The Clerk.— Senator Wagner.

Senator Wagner.— Mr. President, during the course of the progress of the so-called stock exchange bill, I was brought in contact with the Governor very largely. I shall spare the respondent at this time, giving my personal views, or at least the views I entertained when the revelations with reference to the

Stock Exchange transactions became public. I, however, must vote upon this article, according to the evidence at this trial, and upon that I vote not guilty.

The Clerk.— Senator Walters.

Senator Walters.— Not guilty.

The Clerk.— Senator Wende.

Senator Wende.— Not guilty.

The Clerk.— Judge Werner.

Judge Werner.— Not guilty.

The Clerk.— Senator Wheeler.

Senator Wheeler.— Not guilty.

The Clerk.— Senator White.

Senator White.— Not guilty.

The Clerk.— Senator Whitney.

Senator Whitney.— Not guilty.

The Clerk.— Senator Wilson.

Senator Wilson.— Not guilty.

The Clerk.— Not guilty, 57.

The President.— Under the vote as announced by the Clerk, the respondent is acquitted of the charges contained in the eighth article of impeachment.

The respondent having been convicted of the first, second and fourth articles of impeachment, it now becomes necessary that the Court should determine on the judgment to be passed on such conviction.

Under the rules the first question is:

"Shall the respondent be removed from office?"

If there is no objection the vote on that proposition will be taken in the same manner as the preceding vote, but the gentle-

men instead of saying yes or no will please say whether they vote for removal from office or not.

As I am one of the minority who did not vote for conviction, I pray to be excused from voting on this subject.

Call the roll, Mr. Clerk.

The Clerk.— Shall I read the rule or call the roll?

The President.— First read the rule.

The Clerk.— Shall William Sulzer be removed from his office of Governor of this State, for the cause stated in the articles, of the charges preferred against him upon which you have found him guilty?

Senator Wagner.— I don't know whether it is very important, but I would like to call the attention of the President to the provision of the Code which says that the vote upon the judgment shall be by yeas and nays. That is section 126.

Judge Bartlett.— That is substantive, I think.

The President.— You may answer yes or no, then.

The Clerk.— Senator Argetsinger.

Senator Argetsinger.— Yes.

The Clerk.— Judge Bartlett.

Judge Bartlett.— Yes.

The Clerk.— Senator Blauvelt.

Senator Blauvelt.— Yes.

The Clerk.— Senator Boylan.

Senator Boylan.— Yes.

The Clerk.— Senator Brown.

Senator Brown.— Yes.

The Clerk.— Senator Bussey.

Senator Bussey.— Yes.

The Clerk.— Senator Carroll.

Senator Carroll.— Yes.

The Clerk.— Judge Chase.

Judge Chase.— Yes.

The Clerk.— Senator Coats.

Senator Coats.— Yes.

The Clerk.— Judge Collin.

Judge Collin.— Yes.

The Clerk.— Judge Cuddeback.

Judge Cuddeback.— Yes.

The Clerk.— Judge Cullen, President. Not voting, excused.

The Clerk.— Senator Cullen.

Senator Cullen.—Yes.

The Clerk.— Senator Duhamel.

Senator Duhamel.— Mr. President, the legal points in this impeachment seem very simple. Articles 1 and 2 charged unlawful acts committed before the respondent took office, and the Constitution does not provide for impeachment, but did during half the existence of the Commonwealth specifically declare against impeachment under such circumstances and in some 43 precedents not one was impeachment under such charges, but the nearest approach was the Barnard case where the acts were committed in the first term of office but during the period he continued to hold office. It was admitted this conviction was the establishment of a new precedent in law.

With regard to article IV there it is again that a new precedent was being established in practically amending an article of impeachment or an indictment.

It was stated the respondent was being convicted on grounds on which he was not impeached.

I vote no.

The Clerk.— Senator Emerson.

Senator Emerson.— No.

The Clerk.— Senator Foley.

Senator Foley.— Yes.

The Clerk.— Senator Frawley.

Senator Frawley.— Yes.

The Clerk.— Senator Godfrey.

Senator Godfrey.— Yes.

The Clerk.— Senator Griffin.

Senator Griffin.— Yes.

The Clerk.— Senator Heacock.

Senator Heacock.— No.

The Clerk.— Senator Healy.

Senator Healy.— Yes.

The Clerk.— Senator Heffernan.

Senator Heffernan.—Yes.

The Clerk.— Senator Herrick.

Senator Herrick.— Yes.

The Clerk.— Senator Hewitt.

Senator Hewitt.— Yes.

The Clerk.— Judge Hiscock.

Judge Hiscock.— Yes.

The Clerk.— Judge Hogan.

Judge Hogan.— Yes.

The Clerk.— Senator McClelland.

Senator McClelland.— Yes.

The Clerk.— Senator McKnight.

Senator McKnight.— No.

The Clerk.— Senator Malone.

Senator Malone.— Yes.

The Clerk.— Judge Miller.

Judge Miller.— Yes.

The Clerk — Senator Murtaugh.

Senator Murtaugh.— Yes.

The Clerk.— Senator O'Keefe.

Senator O'Keefe.— No.

The Clerk.— Senator Ormrod.

Senator Ormrod.— Yes.

The Clerk.— Senator Palmer.

Senator Palmer.— No.

The Clerk.— Senator Patten.

Senator Patten.— Yes.

The Clerk.— Senator Peckham.

Senator Peckham.— No.

The Clerk.— Senator Pollock.

Senator Pollock.— Yes.

The Clerk.— Senator Ramsperger.

Senator Ramsperger.— Yes.

The Clerk.— Senator Sage.

Senator Sage.— Yes.

The Clerk.— Senator Sanner.

Senator Sanner.— Yes.

The Clerk.— Senator Seeley.

Senator Seeley.— I have written a statement which I would like to submit.

The President.— You may read it or file it whichever course your prefer.

Senator Seeley.— I will file it. I vote No.

The Clerk.— Senator Simpson.

Senator Simpson.— Yes.

The Clerk.— Senator Stivers.

Senator Stivers.— No.

The Clerk.— Senator Sullivan.

Senator Sullivan.— Yes.

The Clerk.— Senator Thomas.

Senator Thomas.— No.

The Clerk.— Senator Thompson.

Senator Thompson.— Yes.

The Clerk.— Senator Torborg.

Senator Torborg.— Yes.

The Clerk.— Senator Velte.

Senator Velte.— Yes.

The Clerk.— Senator Wagner.

Senator Wagner.— Yes.

The Clerk.— Senator Walters.

Senator Walters.— Yes.

The Clerk.— Senator Wende.

Senator Wende.— For the reason I have voted not guilty on all occasions, and for the reason that my associates by a large majority have seen fit to convict and for the reason that if that judgment is right, it is my belief the respondent would be unfitted for holding office, I ask to be excused from voting on this question.

The President.— No objection, Senator Wende will be excused.

The Clerk.— Judge Werner.

Judge Werner.— Yes.

The Clerk.— Senator Wheeler.

Senator Wheeler.— No.

The Clerk.— Senator White.

Senator White.— Yes.

The Clerk.— Senator Whitney.

Senator Whitney.— No.

The Clerk.— Senator Wilson.

Senator Wilson.— Yes.

The Clerk.— Yes, 43; No, 12; Excused, 2.

The President.— The next resolution to be submitted now, gentlemen, is: Shall William Sulzer be disqualified to hold any office of honor or trust or profit under this State? Under that you may vote the same as you did on the previous one, yes, or no. Read the provision, Clerk, and call the roll.

The Clerk (Reading).—"Shall William Sulzer be disqualified to hold any office of honor, trust or profit under this State?"

The answer is yes or no?

The President.— Answer yes or no.

The Clerk.— Senator Argetsinger.

Senator Argetsinger.— He should not be disqualified, no.

The President.— You vote no.

Senator Argetsinger.— No.

The Clerk.— Judge Bartlett.

Judge Bartlett.— No.

The Clerk.— Senator Blauvelt.

Senator Blauvelt.— No.

The Clerk.— Senator Boylan.

Senator Boylan.— Mr. President, I feel that I would not like to be in a position of saying to a man that the doors of opportunity are forever barred against him, because I have always felt that no matter to what depth a man has fallen there is always hope for his ultimate redemption; and for the further reason that I believe the people of this State should decide this question, I vote no.

The Clerk.— Senator Brown.

Senator Brown.— No.

The Clerk.— Senator Bussey.

Senator Bussey.— No.

The Clerk.— Senator Carroll.

Senator Carroll.— No.

The Clerk.— Senator Carswell.

Senator Carswell.— No.

The Clerk.— Judge Chase.

Judge Chase.— No.

The Clerk.— Senator Coats.

Senator Coats.— No.

The Clerk.— Judge Collin.

Judge Collin.— No.

The Clerk.— Judge Cuddeback.

Judge Cuddeback.— No.

The Clerk.— President, Judge Cullen.

The President.— I ask to be excused from voting on this for the same reason that you granted me an excuse on the preceding question. If there is no objection, I shall consider myself excused.

The Clerk.— Senator Cullen.

Senator Cullen.— No.

The Clerk.— Senator Duhamel.

Senator Duhamel.— No.

The Clerk.— Senator Emerson.

Senator Emerson.— No.

The Clerk.— Senator Foley.

Senator Foley.— No.

The Clerk.— Senator Frawley.

Senator Frawley.— No.

The Clerk.— Senator Godfrey.

Senator Godfrey.— No.

The Clerk.— Senator Griffin.

Senator Griffin.— No.

The Clerk.— Senator Heacock.

Senator Heacock.— No.

The Clerk.— Senator Healy.

Senator Healy.— No.

The Clerk.— Senator Heffernan.

Senator Heffernan.— No.

The Clerk— Senator Herrick.

Senator Herrick.— No.

The Clerk.— Senator Hewitt.

Senator Hewitt.— No.

The Clerk.— Judge Hiscock.

Judge Hiscock.— Mr. Presiding Officer, as I have already indicated, I believe that this question of the future of this respondent,

with reference to holding office, should be left to the people themselves, who have the right — who have the power and who have the right to pass on that question. Therefore, I vote no.

The Clerk.— Judge Hogan.

Judge Hogan.— No.

The Clerk.— Senator McClelland.

Senator McClelland.— No.

The Clerk.— Senator McKnight.

Senator McKnight.— No.

The Clerk.— Senator Malone.

Senator Malone.— No.

The Clerk.— Judge Miller.

Judge Miller.— No.

The Clerk.— Senator Murtaugh.

Senator Murtaugh.— No.

The Clerk.— Senator O'Keefe.

Senator O'Keefe.— No.

The Clerk.— Senator Ormrod.

Senator Ormrod.— No.

The Clerk.— Senator Palmer.

Senator Palmer.— No.

The Clerk.— Senator Patten.

Senator Patten.— No.

The Clerk.— Senator Peckham.

Senator Peckham.— No.

The Clerk.— Senator Pollock.

Senator Pollock.— No.

The Clerk.— Senator Ramsperger.

Senator Ramsperger.— No.

The Clerk— Senator Sage.

Senator Sage.— No.

The Clerk.— Senator Sanner.

Senator Sanner.— No.

The Clerk.— Senator Seeley.

Senator Seeley.— No.

The Clerk.— Senator Simpson.

Senator Simpson.— No.

The Clerk.— Senator Stivers.

Senator Stivers.— No.

The Clerk.— Senator Sullivan.

Senator Sullivan.— No.

The Clerk.— Senator Thomas.

Senator Thomas.— No.

The Clerk.— Senator Thompson.

Senator Thompson.— Mr. President, this Court has convicted for acts which the people did not and could not have known at the last election, the Governor of this State, and he has — it has resulted, as I say, in a conviction. I think the question of the future disqualification should be left to the people, they now being in possession of the facts. I, therefore, vote no.

The Clerk.— Senator Torborg.

Senator Torborg.— No.

The Clerk.— Senator Velte.

Senator Velte.— No.

The Clerk.— Senator Wagner.

Senator Wagner.— No.

The Clerk.— Senator Walters.

Senator Walters.— No.

The Clerk.— Senator Wende.

Senator Wende.— No.

The Clerk.— Judge Werner.

Judge Werner.— No.

The Clerk.— Senator Wheeler.

Senator Wheeler.— No.

The Clerk.— Senator White.

Senator White.— No.

The Clerk.— Senator Whitney.

Senator Whitney.— No.

The Clerk.— Senator Wilson.

Senator Wilson.— No.

The Clerk.— 56 noes.

The President.— The respondent, William Sulzer, having been convicted by the vote of more than two-thirds of the members of this Court on the first, second and fourth articles of impeachment, and the Court having resolved that for the offenses for which he has been — of which he has been convicted, the respondent be removed from office, it is the judgment of the Court, and it is now the duty of the President, to declare that for those offenses the said William Sulzer, Governor of the State, be, and he is hereby, removed from his said office as Governor.

Senator Murtaugh.— Mr. President.

The President.— Senator Murtaugh.

Senator Murtaugh.— Mr. President, I move that the Chair be authorized to appoint a committee of three for the purpose of editing and revising the final record in this proceeding.

The President.— Is the motion seconded?

Senator Wagner.— I second the motion.

Senator Sullivan.— I second the motion.

The President.—All in favor of that motion please say aye.

The members of the Court responded accordingly.

The President.— Opposed no. Carried.

Senator Murtaugh, Senator Sage and Senator Blauvelt will be appointed as that committee.

Mr. Kresel.— May it please the Court.

The President.— I am not appointing any member of the Bench, because they will have enough other work to do when they leave this Court.

Mr. Kresel.— May it please the Court, for the purpose of completing the record, may the counsel for the Managers have included in the record the compilation which was made and which was passed around to the Court?

The President.— Put it as part of your argument?

Mr. Kresel.— Yes, your Honor.

The President.— Yes. Of course it is not in evidence.

Mr. Kresel.— Make that a part of the summation.

The President.— Is there anything further?

Senator Wagner.— Mr. President.

The President.— Senator Wagner.

Senator Wagner.— On a point of information, Mr. President. May I ask the Presiding Judge whether the judgment is now completed, so far as the record is concerned; that it needs only now the certification of the Presiding Judge?

The President.— It needs now only in the opinion — in my opinion all it needs now is the certification of the Clerk and the

Presiding Judge. As a matter of fact, I doubt whether it needs even that. It is the judgment pronounced in open court of this Court, and I think is effective from this instance.

Senator Murtaugh.— Before the motion to adjourn is made the Committee on Revision requests the counsel and the members of the Court who wish to revise their remarks in the printed record and who wish to file statements with the reasons for their votes, and counsel who wish to revise their remarks, will file the same with the Clerk of the Senate before Wednesday of next week. That will be the last day that any statements will be received pertaining to a revision of the record.

The President.— Is there any further business?

Senator Thompson.— Mr. President, I desire to suggest to the presiding officer that he make a statement to this effect, that now all matters which were discussed or performed by this Court in private session can become public.

The President.— The ban of secrecy is now abrogated. Every member of the Court is at liberty to tell anything that he sees fit.

Senator Thompson.— Mr. President, my suggestion was that all matters that transpired in secret session have already become public —

The President.— They may become public so far as the members of the Court choose to divulge them. That is for every member. I know of no obligation the Court can impose or any obligation to tell any one else unless he sees fit.

Senator Wagner.— Mr. President, for the convenience of the members of the Court I have been requested to announce that they leave their files of the records upon their desks, and the full record of the trial will be sent to them within the next few days. I was going to make a motion, I don't know whether that is necessary?

The President.— Yes.

Senator Wagner.— The business for which the Court was convened having been finished, I move that the Court of Impeachment do now adjourn sine die.

The President.— All those in favor of that will please say aye, opposed, no.

Motion carried.

The President.— Crier, adjourn Court without day.

The Crier.— Hear ye, hear ye, hear ye, to all whom it may concern: This Court held in and for the State of New York for the trial of the impeachment of Governor Sulzer now stands adjourned sine die.

INDEX TO ASSEMBLY DOCUMENTS, 1913

	Doc. No.
A.	
Agricultural education, report of State Advisory Board	36
Agriculture, Commissioner, annual report	29
Albion, Western House of Refuge for Women, annual report	14
Alfred University, New York State School of Agriculture, annual report	19
American Life Saving Society, annual report	58
American Scenic and Historic Preservation Society, annual report	59
American Society for the Prevention of Cruelty to Animals, annual report	57
Architect, State, annual report	42
Assembly, bills, supplemental index	63
committees, list	3
members, list	1
Attorney-General, annual report	7
B.	
Bath, New York State Soldiers and Sailors' Home, annual report	8
Berkshire Industrial Farm, annual report	30
Bills, Assembly, supplemental index	63
Boards, commissions and departments, *see specific names of.*	
Buildings, *see* Public Buildings.	
C.	
Canals, report of Comptroller relating to expenditures on	28
Central New York Institution for Deaf Mutes, Rome, annual report	50
Charities, Fiscal Supervisor, annual report	54
Civil Service Commission, annual report	53
Cohalan, Daniel F., proceedings of Joint Judiciary Committee relative to charges against ..... extra session	1
Commissions and departments, *see specific names of.*	
Committees of the Assembly, list	3
Comptroller, State, annual report	10
canals, report on expenditures on	28
municipal accounts, special report	62
Conrad Poppenhusen Association, annual report	13
Conservation Commission, annual report	12
Lake George, report on high and low water in	56
Top lopping law, special report on efficiency of	46
Conservation of Water, minority report of Joint Committee on	24
Crime, statistics of, annual report of Secretary of State	40
D.	
Deaf mutes, Institutions for the instruction of 37, 50, 51, 43,	49
Departments, *see specific names of.*	
Diseases, malignant, *see* Malignant diseases.	
E.	
Education, agricultural 19,	36
Education Department, annual report	26
Elections, State Superintendent, annual report	9

	Doc. No.
F.	
Fiscal Supervisor of Charities, annual report	54
Forestry, special report of Conservation Commission on efficiency of Top lopping law	46
G.	
G. A. R., 47th Annual Encampment, abstract of general orders and proceedings	32
Governor, message	2
H.	
Health Department, annual report	33
Health officer, Port of New York, annual report	6
Highways, State Commission, annual report	11
Hospital Commission, annual report	27
I.	
Index to Assembly bills of 1913, supplemental	63
Institution for the Improved Instruction of Deaf Mutes, New York, annual report	49
Insurance Superintendent, annual report	25
Investigating Committee, report.....extra session	2
J.	
Jewish Protectory and Aid Society, annual report	55
Joint Legislative Investigating Committee, report.....extra session	2
L.	
Labor Commissioner, annual report	48
Lake George, high and low water in, report of Conservation Commission	56
Land Office, report of Commissioners in relation to escheated lands	23
Le Couteulx St. Mary's Institution for the Improved Instruction of Deaf Mutes, annual report	43
Legislative Investigating Committee, report.....extra session	2
Library, State, annual report	47
Lumbering, special report of Conservation Commission on efficiency of Top lopping law	46
M.	
Malignant Diseases, Institute for the Study of, annual report of Trustees	45
Members of the Assembly, list	1
Municipal accounts, special report by Comptroller	62
Museum, State, annual report	34
N.	
New York Hospital, Society of, annual report	41
New York Hospital for the Care of Crippled and Deformed Children, annual report	38
New York Institute for the Education of the Blind, annual report	5
New York Institution for the Improved Instruction of Deaf Mutes, annual report	49
New York Institution for the Instruction of the Deaf and Dumb, annual report	51
New York Society for the Prevention of Cruelty to Children, annual report	61

	Doc. No.
New York State Bridge and Tunnel Commission, annual report	60
New York State Library, annual report	47
New York State Museum, annual report	34
New York State School for the Blind, annual report	16
New York State School of Agriculture, Alfred University, annual report.	19
New York State Soldiers and Sailors' Home, Bath, annual report	8
Niagara State Reservation, annual report of Commissioners	44
Northern New York Institution for Deaf Mutes, annual report	37

O.

Oxford, Woman's Relief Corps Home, annual report	18

P.

Palisades Interstate Park, annual report	4
Port of New York, Health officer, annual report	6
Probation Commission, annual report	52
Public Buildings, report of the Trustees	22

R.

Roads, *see* Highways.	
Rome, Central New York Institution for Deaf Mutes, annual report	50
Rome State Custodial Asylum, annual report	20

S.

Secretary of State, annual report on statistics of crime	40
Society of the New York Hospital, annual report	41
Spanish War Veterans, annual report	31
Standing Committees, *see* Committees.	
State boards, commissions and departments, *see specific names of.*	
Statistics of crime, annual report of Secretary of State	40
Sulzer, William, proceedings of Court for Trial of Impeachments	3 extra session
Supplemental index	63
Surrogates, New York State Association of, report of Revision Committee.	35
Syracuse State Institution for Feeble-Minded Children, annual report	39

T.

Top lopping law, special report of Conservation Commission on efficiency of	46
Treasurer, State, annual report	17
Trees, special report of Conservation Commission on efficiency of Top lopping law	46

U.

United Spanish War Veterans, annual report	31

V.

Veterinary College, State, annual report	21

W.

Water conservation, minority report of Joint Committee on	24
Watkins Glen Reservation, annual report	15
Western House of Refuge for Women, Albion, annual report	14
Woman's Relief Corps Home, Oxford, annual report	18

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